

# NORTHERN PACIFIC RAILWAY COMPANY

## INDUSTRIAL TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Railroad," and CITY OF PORTLAND, COMMISSION OF PUBLIC DOCKS, a municipal corporation of the State of Oregon, hereinafter called the "Industry."

Parties.

Joint Use by  
Other  
Railroads

It is understood that the Spokane, Portland and Seattle Railway Company, a Washington corporation, the Great Northern Railway Company, a Minnesota corporation, the Oregon Electric Railway Company, an Oregon corporation, and the Portland Terminal Railway Company, an Oregon corporation, under contracts with the Northern Pacific Railway Company, have the equal right to use the trackage which is the subject matter of this agreement, and all of the stipulations in this agreement contained shall be for the equal, joint and several benefit of said companies, as well as the Northern Pacific Railway Company, and any other company which may be admitted to the use of the trackage.

Location.

The Industry desires the construction, maintenance, and operation of ~~certain railroad~~ spur tracks, hereinafter called "track", to be located at Portland, Oregon, as shown colored RED and GREEN ~~between the letters~~

Right of Way.

on the map marked "Exhibit A", attached hereto and made a part hereof; and the Railroad agrees to construct, maintain, and operate said track, on the following terms and conditions:

Section 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance, and operation of the track.

The Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that the same may be granted to the Railroad rather than to the Industry, to assume any, and all liability for and to indemnify, defend and save harmless the Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

Construction,  
Ownership, and  
Maintenance.

Section 2. The Railroad, at its expense, shall construct and maintain that portion of the track lying between the switch point and the northerly boundary of the Railroad's right of way, a length of 108 feet, as indicated by the RED line between the letters A and B on Exhibit "A".

The Industry, with its own labor, materials and equipment and at its own expense, shall construct and thereafter shall own and shall maintain those portions of the track lying northerly of the northerly boundary line of the Railroad's right of way, including the track lying in Sherlock Avenue and N.W. Front Avenue, as indicated by GREEN lines on Exhibit "A".

All work performed by the Industry in the construction and maintenance of said track, or of additions and betterments thereto, shall be done in a substantial and workmanlike manner and in accordance with the Railroad's standards.

The Industry shall pay the cost of all future changes in or additions to the Railroad's line made necessary by the construction and continued existence and operation of the track.

Definition  
of Cost.

Section 3. For the purpose of this agreement, "cost," shall be all assignable costs, plus ten percent to cover elements of expense not capable of exact ascertainment, plus three percent of the salaries and wages paid employees of the Railroad engaged in the performance of maintenance or addition and betterment work performed by the Railroad upon the request of the Industry for insurance coverage. Material shall be charged at its current value where used.

Right of  
Railroad  
to use.

Section 4. The Railroad shall have the right to use or to extend the track for the accommodation of the business of the Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by the Industry. In case the track is regularly used by or is extended for the accommodation of another industry, it is agreed that the Railroad may fix the terms upon which such new industry shall share in the cost of construction and maintenance of the track used in common.

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Circumstances.

Section 5. Except as herein otherwise provided, the Industry shall not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8  $\frac{1}{2}$ ) feet laterally of the center, or within twenty-three (23) feet vertically from the top of the rail, of said track.

The Industry agrees that no building erected on the premises adjacent to said track shall have a swinging door or window opening toward said track which, when open, will restrict the clearance to less than eight and one-half (8  $\frac{1}{2}$ ) feet from the center line of said track.

The Industry agrees that all wires of whatsoever kind or nature adjacent to or crossing over or under the track shall be constructed and maintained in accordance with the National Electric Safety Code and laws of the State of Oregon and in accordance with plans submitted by the Industry and approved by the Railroad.

The Industry agrees to indemnify and save harmless the Railroad from all loss, damages, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner growing out of a violation of this Section 5.

Public Assessments.

Section 6. The Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Transportation of Freight.

~~Section 7. All freight to or from the Industry located upon or reached by said track, shall be delivered to and transported by the Railroad over its line or lines of railway if its rate of transportation is as low as the rate over competing railway lines.~~

Liability.

Section 8. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment.

Section 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad.

Right to Disconnect Track.

Section 10. The Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) The Industry ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.

(b) The Railroad determines that the amount of business done upon such tracks be insufficient to justify the continued operation of the same by the Railroad.

(c) The Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

(d) The Railroad shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter its tracks at or near the point of connection with said Industry track so as to make it impracticable in the judgment of the management of said Railroad to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railroad, for the convenient operation of its railroad, the Industry shall continue to have similar track connection consistent with the change or changes made by the Railroad.

(e) Whenever any other carrier shall be permitted, without the consent of the Railroad, to operate on said track

(f) If the Industry fails to maintain said spur track in reasonably safe condition.

No recourse or claim will exist in favor of or be asserted by the Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this agreement.

~~Section 11. The Railroad agrees, upon discontinuance of the use of the track, to remove from its rights of way that part of the track originally paid for by the Industry and to pay to the Industry the salvage value of the usable material so removed, less cost of recovering it.~~

Dated April 3 1962

APPROVED

E. Smith  
CONTROLLER

APPROVED AS TO FORM  
White, Sutherland & Gilbertson

By James J. Mowat  
LOCALITY FOR THE COMMISSION OF PUBLIC DOCKS

James J. Mowat  
Chief Engineer

APPROVED

M. A. Mowat

NORTHERN PACIFIC RAILWAY COMPANY

By [Signature]  
Vice President

CITY OF PORTLAND, COMMISSION OF PUBLIC DOCKS

By [Signature]

Title: Chairman

COMMISSION OF PUBLIC DOCKS

[Signature]  
GENERAL MANAGER & SECRETARY



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FEDERAL MARITIME  
COMMISSION  
OFFICE OF THE SECRETARY

MANAGEMENT AGREEMENT

BETWEEN

THE PORT OF PORTLAND

AND

BRADY HAMILTON STEVEDORE COMPANY, dba  
STEVEDORING SERVICES OF AMERICA, INC.

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MANAGEMENT AGREEMENT FOR THE  
PORT OF PORTLAND'S TERMINAL 2  
MARINE FACILITY

This MANAGEMENT AGREEMENT, made and entered into this \_\_\_\_ day of July, 1985, by and between THE PORT OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred as "Port," and BRADY HAMILTON STEVEDORE COMPANY dba STEVEDORING SERVICES OF AMERICA, INC., 5051 North Lagoon Avenue, Portland, Oregon 97217, a corporation duly organized under the laws of the State of Oregon, hereinafter referred to as "SSA."

W I T N E S S E T H:

WHEREAS, the Port is willing to enter into a management agreement with a qualified company for its existing multiple-user general cargo facilities, or portions thereof, at Terminal 2 provided that certain conditions are met which are necessary for the community's best interests; and

WHEREAS, SSA has made a proposal to the Port to operate the Port's Terminal 2 facility and the renovated portions of that terminal when it is completed; and



WHEREAS, SSA is willing to use its best efforts in furthering the efficient utilization of Terminal 2 in worldwide commerce, market Terminal 2 capacities, and provide professional marine terminal management services for Terminal 2; and

WHEREAS, the parties desire to set forth their respective responsibilities for the management of Terminal 2.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

#### ARTICLE I - PREMISES AND GENERAL ADMINISTRATION

Section 1.01 - Description of Terminal 2: SSA, on the terms and conditions stated below, shall provide professional marine terminal management services for Terminal 2, which consists of approximately 1,170,893 (      ) square feet which is on the date of this Agreement improved with certain facilities and which is more completely described in Port Drawing No. 1, attached hereto as Exhibit A and made a part hereof, and hereinafter referred to as "Terminal 2."

Upon completion of certain bond financed improvements at Terminal 2 by the Port, SSA also desires to provide professional marine terminal management services for that portion of the Port's facility which consists of approximately 1,242,767 (      ) square feet and improved with certain facilities and which is more

26 cores



28 acres





completely described in Port Drawing No. 1 attached hereto as Exhibit B, and made a part hereof, hereinafter referred to as "Bond Financed Improvements". The terms and conditions of the Port and SSA's agreement with respect to the Bond-Financed Improvements are set forth in Exhibit C, the provisions of which are hereby incorporated by reference. Port and SSA agree that upon completion of the Bond-Financed Improvements, SSA and Port shall execute a management agreement in a form substantially similar to Exhibit C.

Section 1.02 - Use of Terminal 2: SSA may use Terminal 2 to perform the professional marine terminal services the Port presently provides at Terminal 2 and any other marine terminal services in their capacity as the marine terminal operator. In accordance with the terms of this Agreement, SSA will provide and maintain all operating equipment, except for cranes, and be responsible for security at Terminal 2 including all cargo located therein. Stevedoring services at Terminal 2 may be provided by SSA or any other stevedoring firm, consistent with the management practices of the Port at Terminal 2 existing prior to the effective date of this Agreement. Any and all stevedore companies can stevedore cargo at Terminal 2 to place of rest, to direct transfer point, or overside, as appropriate and SSA agrees that it will manage and operate Terminal 2 in a prudent, open, and to the extent possible, nondiscriminatory manner. SSA shall use its best efforts to serve the needs of the exporters, importers, and the marine-related business located within the Port district.

SAA understands that this Agreement does not create any leasehold estate and only conveys a license to SSA for its use of Terminal 2 to the extent necessary for the performance of SSA obligations under this Agreement.

Section 1.03 - Good Faith: The terms and conditions set forth in this Agreement are for the mutual benefit of both parties. Because of the nature of this Agreement, the parties agree that time is of the essence, and that there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions, and covenants imposed by this Agreement.

Section 1.04 - Information and Cooperation: Both parties shall provide full information regarding their requirements for the successful accomplishment of the purposes of this Agreement and marketing of Terminal 2. SSA and Port agree to share all information, relevant to this Agreement excluding exempt information as provided in ORS Chapter 192, and to cooperate with all corporations, firms, contractors, governmental entities, and other persons involved in, or associated with Terminal 2. Public access to Terminal 2 for media coverage, tours, promotional events, or political events shall be coordinated between the Port and SSA. Copies of this Agreement will be provided to any requesting party without charge. SSA shall prepare a monthly report to the Port reasonably detailing vessel calls, vessel characteristics, and time at berth.



Section 1.05 - Duty to Inform: If at any time during the performance of this Agreement, or at any time in the future, with respect to Terminal 2, either party becomes aware of actual or potential problems, faults or defects, any nonconformance with contract, federal, state, or local law, rule or regulation, or have any objection to any decision or order made by the other party, the parties agree to give prompt notice to the other party's Project Manager.

Section 1.06 - Port's Project Manager: The Port shall appoint a Project Manager who will speak on behalf of the Port and to the extent of the Project Manager's delegated authority, shall make decisions concerning the interpretation of this Agreement. Within twenty (20) days after execution of this Agreement, Port shall give SSA written notice of its Project Manager. Port shall give SSA written notice of any change in its Project Manager.

Section 1.07 - SSA's Project Manager: SSA shall name a Project Manager within twenty (20) days after execution of this Agreement. SSA shall act through its Project Manager who shall have full authority to act on behalf of and execute written documents that legally bind SSA. SSA shall give Port written notice of any change in its Project Manager.

Section 1.08 - Effective Date: This Agreement shall be filed by the Port with the Federal Maritime Commission (FMC). This Agreement shall be effective as soon as practicable, but in no event later than twenty (20) days following the date that the FMC designates as its FMC effective date or the date upon which FMC designation of an effective date is no longer required (the "Effective Date"). If the FMC rejects this Agreement, this Agreement shall be of no force or effect. The foregoing shall also apply to each amendment to this Agreement which is required to be filed with the FMC.

Section 1.09 - Inspection of the Premises: On the Effective Date of this Agreement and on each anniversary thereafter during the period of this Agreement or extension thereof, Port and SSA, each at their own expense, will jointly inspect Terminal 2 to review the conditions of the facility and improvements and to mutually agree upon the need for reasonable repairs or upgrading of Terminal 2.

Section 1.10 - Marketing Plans: Port and SSA shall be responsible for establishing and conducting their respective marketing programs and shall use their best abilities to attract customers to Terminal 2. On a periodic basis, the parties shall jointly review their marketing programs to ensure that such plans are coordinated.

## ARTICLE II - TERM

### Section 2.01 - Initial Term:

The term of this Agreement shall commence on the Effective Date, and shall continue for a period of five (5) years from the Effective Date (the "Initial Term").

### Section 2.02 - Additional Term:

At the end of the Initial Term for Terminal 2, if SSA is not then in default, SSA shall have one (1) option to renew this Management Agreement for a period of five (5) years ("Renewal Period") on all the same terms and conditions subject to adjustment of the Minimum Guarantee as set forth below in Section 3.05. SSA may exercise its option by giving written notice to Port not less than one hundred and twenty days (120) nor more than one hundred eighty days (180) before the last day of the expiring term.

At the end of the first (1st) five (5) year Renewal Period of the Agreement, Port and SSA agree to negotiate in good faith, on terms mutually agreeable to the parties, two subsequent five (5) year renewals of this Agreement. Notwithstanding any other provisions of this Agreement, the failure of the parties to reach a mutually agreeable renewal or extension of the term of this Agreement beyond ten (10) years following the Effective Date shall not be subject to arbitration, any third party intervention, or to specific performance.



### ARTICLE III - PAYMENTS

Section 3.01 - Definition of Gross Receipts: As used herein the term "Gross Receipts" shall mean the total amount received or realized by, or accruing to, SSA from all wharfage and dockage charges from Terminal 2 and the other charges stemming out of the use of Terminal 2 for cash, credit, services, or materials specifically set forth in Section 3.03(E)(5) . All Gross Receipts shall be deemed to be received on the date of the invoice from SSA to its customers for each transaction, whether for cash or credit, and not at the time of payment, unless otherwise specifically authorized by Port in writing. Nothing contained herein shall be construed to entitle the Port to any portion of receipts paid to SSA for the stevedoring or marine terminals services provided by SSA.

Section 3.02 - Terminal Tariff and Dockage Charges: The Port and SSA agree that during the Agreement term and any extensions thereof, the Port reserves the exclusive right to determine the rate for wharfage and dockage charges on all vessels berthing at Terminal 2 in accordance with the Port of Portland published tariff in effect at the time of berthing. All published tariffs rates applicable to Terminal 2, including any published discounts shall at all times be competitive with rates in effect by the Port at its other facilities, whether or not such facilities are operated by the Port.

Section 3.03 - Sharing of Gross Receipts: The Parties shall share all Gross Receipts in accordance with the below formula. The lines and shippers named below are for identification purposes only and are not bound by the terms and conditions of this Agreement.

A. For all Gross Receipts generated by and attributed to each of the following Port existing customers defined below, regardless of its character as a shipper, agent, or owner of the cargo, or line used:

Share of Gross Receipts

80% to Port

20% to SSA

For purposes of this Section 3.03A, existing customers are defined as:

1. Hong Kong Islands Line.
2. Boise Cascade Export Cargo--regardless of the line used.
3. Italian Line.
4. D'Amico Line.
5. Trade Ocean Line.

6. Shipping Corporation of India.
7. Scindia Steam Navigation Co., Ltd.
8. Naviera Interamericana Navicana S.A.
9. Pacific Australia Direct Line (PAD) vessels.
10. Crowley-controlled barge operations.

B. For all Gross Receipts attributable to customers not calling at the Port within the previous twelve (12) months, the below-listed revenue split shall apply.

Share of Gross Receipts

40% to Port

60% to SSA

C. For any and all customers not described in Section 3.03(A) or (B) above, the below-listed revenue split shall apply.

Share of Gross Receipts

60% to Port

40% to SSA



D. Any shifting of existing Port customers to or from Terminal 2 during the term of this Agreement shall be effected only upon mutual consent of the parties.

E. Other Revenues:

1. All services and facility revenues during the term of this Agreement shall belong to SSA.
2. All truck loading and unloading revenues during the term of this Agreement shall belong to SSA.
3. All railcar loading/unloading revenues during the term of this Agreement shall belong to SSA.
4. All miscellaneous labor-related revenues during the term of this Agreement shall belong to SSA.
5. The charges for miscellaneous items described in Exhibit D, shall be divided in accordance with that Exhibit.

Section 3.04 - Financial Responsibility For Operations:

A. Security: SSA shall maintain proper security at Terminal 2 and shall be responsible for all charges and costs associated therewith.

B. Equipment:

1. Container cranes, including telescoping beams, shall be furnished by Port to SSA upon request. SSA shall pay the Port and use the container cranes in accordance with the rates, terms, and conditions of the Port tariff. The Port shall maintain the container cranes in accordance with the standards of maintenance as set forth in the Port's maintenance program. Both parties shall agree upon the initial maintenance program for the container cranes and upon any subsequent changes thereof.
2. SSA will have an opportunity to negotiate, on mutually agreeable terms, for any Port breakbulk equipment currently located on Terminal 2. All other terminal operations equipment which SSA deems appropriate, except container cranes, shall be furnished and completely maintained by SSA.

C. Utilities. All utilities including sewer, water, gas, telephone, and electricity, with the exception of electricity required to operate container cranes which shall be paid by the Port, shall be paid by SSA. Electricity required to operate container cranes shall be separately metered or the proportional charges agreed upon by the parties.

Section 3.05 - Minimum Guarantee:

A. For the first one (1) year period following the Effective Date of this Agreement, the Minimum Annual Guarantee ("Minimum Guarantee") that SSA shall pay the Port is Six Hundred Thousand and No/100 Dollars (\$600,000.00).

B. For each one (1) year period succeeding the first one (1) year period during the Initial Term, the Minimum Guarantee shall increase by Fifty Thousand and No/100 Dollars (\$50,000) per year.

C. In the event that Hong Kong Islands Line or its successors or assigns terminates service at Terminal 2 during the initial term of this Agreement, the Minimum Guarantee shall be reduced by the ratio of the Gross Receipts received by the Port for wharfage and dockage from Hong Kong Islands Line over the total Gross Receipts received by the Port for wharfage and dockage. This ratio shall be based on the prior twelve (12) months Gross Receipts for wharfage and dockage generated by Hong Kong Islands Line as of the date Hong Kong Islands Line leaves Terminal 2.

For purposes of this Section 3.05(C), termination of service at Terminal 2 by Hong Kong Islands Line shall mean at least a sixty-seven percent (67%) reduction in Hong Kong Islands Lines wharfage and dockage total revenues at Terminal 2 for the current year when compared to the prior year.



D. In addition to Section 3.05(C), if Hong Kong Islands Line fails to commence, or terminates its Terminal 2 service within twelve (12) months from the Effective Date of this Agreement, the Minimum Guarantee shall be reduced by means of the formula set forth above using gross wharfage and dockage revenue realized by the Port at Terminal 6 and by SSA at Terminal 2 during the twelve (12) months period prior to the Effective Date of this Agreement.

E. In the event of a force majeure as defined in Section 7.06, the Minimum Guarantee set forth in this Section 3.05 shall be reduced by the amount of the Port's allocable share of any Gross Receipts that were reasonably expected to be realized by SSA at Terminal 2, but were not realized because of the existence of such force majeure.

F. During the first (1st) year of the first (1st) Renewal Period of this Agreement, the Minimum Guarantee shall be either Eight Hundred Thousand and No/100 Dollars (\$800,000.00) per year or one-half of the Gross Receipts paid to the Port for wharfage and dockage for the previous twelve (12) month period, whichever sum is greater. Each additional year beyond the first (1st) year of the first (1) renewal period, the Minimum Guarantee will be increased by Fifty Thousand and No/100 Dollars (\$50,000.00) for each and every year thereafter.

Section 3.06 - Time and Place of Payments:

A. SSA shall expeditiously invoice all Terminal 2 customers and perform all of the billing and collection of the Gross Receipts.

B. SSA shall pay Port, within the time limits specified for the payment of wharfage and dockage in the Port's then current marine terminals tariff, the Port's share of of Gross Receipts specified in Section 3.03.

C. Payments made by SSA to the Port shall be accompanied by a copy of all invoices billed by SSA to third parties for marine terminal services shared under this Agreement.

D. Payment shall be to Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as Port may designate. Subject to Section 3.07, all amounts not paid by SSA when due shall bear interest at the rate set forth in the Port's then current marine terminal tariff.

Section 3.07 - Annual Reconciliation: Within sixty (60) days of each and every anniversary year of this Agreement, SSA will reconcile the payments made to the Port pursuant to this Agreement to ensure that all payments accurately reflect the percentage allocation of Gross Receipts made to the Port. In the event that such payments do

not equal the Minimum Guarantee provided in Section 3.05, SSA shall pay the deficiencies to the Port within thirty (30) days after completing the reconciliation.

Section 3.08 - Audit of Records: The Port reserves the right to audit SSA's revenue control system, books, and records of receipts at any time for the purpose of verifying the amount of Gross Receipts hereunder. SSA shall make available at a location in Portland, Oregon, those SSA records that pertain to this Agreement, when requested by the Port, so Port may audit those records. If, as a result of such audit, it is established that SSA has understated the Gross Receipts by three percent (3%) or more, after the deductions and exclusions provided for herein, during the previous annual reporting period under this Agreement, the entire expense of such audit shall be borne by SSA. If such audit discloses that SSA has understated Gross Receipts, the Port's allocable share of such Gross Receipts due shall immediately be paid by SSA to the Port with interest thereon at the Port's prevailing interest rate as published in the Port's marine tariff from the date such wharfage and dockage charges became due. If SSA has overstated Gross Receipts, any credit for overpayment shall be made by the Port to SSA and Port shall refund the overpayment to SSA within thirty (30) days.

Section 3.09 - Unique or Unusual Cargo Movements:

The Port and SSA may mutually agree to rates, charges, and the sharing thereof, credit and collection terms, that may be exceptions to those stated herein on cargo movements that are not regulated by



the Federal Maritime Commission. Such rates and charges, including any applicable discounts, shall at all times be competitive with rates offered by the Port at its other facilities, whether or not such facilities are operated by the Port.

#### ARTICLE IV - SSA OBLIGATIONS

Section 4.01 - Construction of Improvements: SSA shall not construct or install any improvements at Terminal 2 without the Port's express written permission.

Section 4.02 - Conduct of Business: SSA agrees to continuously conduct and carry on its professional management services at Terminal 2 and shall keep Terminal 2 open for business and cause such business to be conducted therein each and every business day generally observed by like businesses.

Section 4.03 - Title to Improvements: Upon termination of this Agreement by the passage of time or otherwise, the Port shall require SSA and SSA shall remove all structures, installations, or improvements built by SSA at Terminal 2 pursuant to this Agreement within ninety (90) days after the expiration of this Agreement at SSA's sole expense unless the Port and SSA are able to mutually agree upon Port's purchase of any SSA improvements.

Section 4.04 - Maintenance: Except the Port provided container cranes, SSA shall keep and maintain the equipment at Terminal 2 and all improvements of any kind, which may be erected, installed, or made

thereon by SSA, in good and substantial repair and condition, including the exterior condition thereof, and shall make all necessary repairs and alterations thereto. SSA shall provide proper containers for trash and garbage and shall keep the premises free and clear of rubbish, debris, and litter at all times. Port shall have the right to enter upon and inspect Terminal 2 at any time.

Section 4.05 - Liens: Except with respect to obligations incurred by the Port, SSA agrees to pay, when due, all sums of money that may become due for, or supporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with SSA's consent to be furnished to or for SSA in, upon, or about Terminal 2 herein described, which may be secured by any mechanics, materialsmen, or other lien against Terminal 2 herein or Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that SSA may in good faith contest any mechanic or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest.

Section 4.06 - Taxes: SSA agrees to pay any and all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon Terminal 2 or upon any taxable

interest by SSA acquired in this Agreement or any taxable possessory right which SSA may have in or to Terminal 2 or facilities herein described or the improvements thereon by reason of SSA occupancy thereof as well as all taxes on all taxable property, real or personal, owned by SSA in or about said Terminal 2, provided that SSA may, in good faith, contest the levying of such taxes and in such event may permit the taxes so contested to remain undischarged and unsatisfied during the period of such contest. Upon making such payments, SSA shall give to the Port a copy of the receipts and vouchers showing such payment. Notwithstanding any other provisions contained in this Agreement, upon termination of the Agreement, all taxes then levied or then a lien on any of Terminal 2 or taxable interest therein shall be paid in full with proration by SSA forthwith or as soon as a statement thereof has been issued by the tax collector. In the event that real property taxes are assessed upon Terminal 2, Port agrees to contest the levying of such taxes at its own expense.

Section 4.07 - Operating Program: On or before July 1 of each calendar year, SSA shall submit its operating plan for Terminal 2 for the ensuing twelve (12) month period to the Port which shall include, among other things, SSA's program for operating, managing, improving, and marketing Terminal 2, status of relationship with community groups, regulatory agencies, and other interested groups.



Section 4.08 - Port Use: Assuming there is no conflict with SSA's customers, SSA agrees to make Terminal 2 available to the Port for Port use on a minimum of seven (7) calendar days and a maximum of ten (10) calendar days written notice by the Port. Port shall share wharfage and dockage revenues with SSA on the basis set forth in Section 3.03. SSA shall perform all billing and collection services for Port use.

Section 4.09 - Signs: All signs installed on Terminal 2 shall be submitted to the Port for review and approval prior to installation. Such approval shall not be unreasonably withheld. No sign shall be permitted on the exterior of Terminal 2 except as approved by the Port.

#### ARTICLE V - INDEMNITY AND INSURANCE

Section 5.01 - Indemnity: SSA agrees fully to indemnify, save harmless, and defend the Port, its commissioners, officers, and employees from and against that portion of all losses, expenses, claims and actions, including all expenses incidental to the investigation and defense thereof of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property, proximately caused by the willful malfeasance or negligence of SSA, or its employees or agents in the use or occupancy of Terminal 2; provided that the Port shall give to the SSA prompt and reasonable notice of any such claims or actions known to Port, and the SSA shall have the right to

investigate, compromise, and defend same, provided such claim is not proximately caused by the negligence of the Port or its employees or agents. Nothing contained in Section 5.01 shall require SSA to indemnify, save harmless, and defend the Port against claims brought by ILWU employees of SSA injured at Terminal 2 who are covered by Workers' Compensation regardless of cause.

In the event that there is any bodily injury at, or property damage to any portion of Terminal 2 caused by SSA or any third (3rd) party, including vessels, SSA shall immediately notify the Port's Claims Manager and shall cooperate in the Port's investigation of such incident. SSA shall make all reports or documents concerning the incident, except for medically and legally privileged information, available to the Port and cooperate with the Port in investigating, compromising or litigating the claim against third (3rd) parties.

✓ For any property damage done to Terminal 2 proximately caused by the negligence of SSA or the breach of this Agreement, SSA shall be given the option of repairing the damage or having the Port repair the damage at SSA's expense.

For any property damage done to Terminal 2 by third (3rd) parties not proximately caused by the negligence of SSA, Port shall bear the cost of investigating, compromising, or litigating the claim.

Section 5.02 - Waiver of Subrogation: The Port and SSA agree that each forfeits any right of action that it may later acquire against the other of the parties to this Agreement for loss or damage to its property, or to property in which it may have an interest,

where such loss is caused by fire or any of the extended coverage hazards, and arises out of or is connected with SSA's use of the premises.

Section 5.03 - Insurance: SSA shall maintain comprehensive, general, and automobile liability insurance for the protection of SSA, its directors, officers, servants, and employees, insuring SSA against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to Terminal 2 or occasioned by reason of the operations of Terminal 2 with insurance of not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit. The policy will cover the legal, contractual, and assumed liability of the SSA as respects its operation of Terminal 2, including stevedoring. This policy will respond to loss or damage to vessels, their equipment, and cargo while in the care, custody, and control of the SSA and to claims for extra expenses arising out of misdelivery or misdirection of cargo. Such amount of insurance coverage shall be subject to adjustment consistent with insurance coverage amounts then considered appropriate by industry standards for SSA's operation of Terminal 2. Such insurance shall not be invalidated by any act or neglect or breach of contract by SSA.

SSA shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and Longshore and Harbor Workers' Compensation Act.



SSA shall furnish to the Port a certificate, which shall be consistent with SSA's obligations under Article V of this Agreement, and shall furnish copies of the policies, if requested by the Port, evidencing the date, amount, and type of insurance that has been procured pursuant to this Agreement. All policies of insurance will provide for not less than thirty (30) days written notice to the Port and SSA before such policies may be revised, nonrenewed, or cancelled.

#### ARTICLE VI - DEFAULT

##### Section 6.01 - Events of Default:

The following shall be "Events of Default":

A. Default in Payments: Upon the Port giving SSA ten (10) days written notice after failure of SSA to make any payment or other charge within ten (10) days after it is due.

B. Default in Other Covenants: Failure of SSA to comply with any term or condition or fulfill any obligation of this Agreement, other than the payment of rent or other charges, within ten (10) days after written notice by Port specifying the nature of the default with reasonable particularity; provided, however, that, if the default is of such a nature that it cannot be completely remedied within the ten (10) day period, such default shall not be deemed an Event of Default if

SSA

begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency: Insolvency of SSA; an assignment by SSA for the benefit of creditors; the filing by SSA of a voluntary petition in bankruptcy; an adjudication that SSA is bankrupt or the appointment of a receiver of the properties of SSA; the filing of an involuntary petition of bankruptcy and failure of SSA to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on SSA's interest in this Agreement and failure of SSA to secure discharge of the attachment or release of the levy of execution within ten (10) days.

D. Abandonment: Failure of SSA for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Agreement unless such failure is excused under other provisions of this Agreement.

Section 6.02 - Notice of Default: In the event of a default under the provision of this Agreement, the Port will provide SSA a notice of default in writing by certified mail.

Section 6.03 - Remedies: Upon an Event of Default defined in Section 6.01 above, the Port shall be entitled to any or all of the following remedies:

2. Port may re-enter, take possession of, and operate Terminal 2, and may remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

#### ARTICLE VII - GENERAL PROVISIONS

##### Section 7.01 - Dispute Resolution:

A. In the event of any dispute, other than as set forth in Section 7.01 B below, among the Port and SSA, including without limitation and dispute as to whether there is an Event of Default, the Port and SSA shall attempt to resolve the dispute by good faith negotiations between the Port and SSA. If such negotiations are unsuccessful, either party may, at any time, request arbitration in accordance with the Multnomah County Circuit Court's Mandatory Arbitration Rules, subject to the following modifications:

1. Except as otherwise mutually agreed to by the parties, the decision of the arbitrator shall be binding upon the parties and enforceable in any court of law without any right of a trial de Novo, or otherwise on the merits, or any appeal to the extent that the item or amount in dispute between the parties does not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) in amount or in the cost of performance.



A. Damages: Port shall be entitled to recover immediately, all past due charges owed to Port by SSA and any other damages incurred by Port, including any costs of re-entering Terminal 2, as a result of SSA's default.

B. Termination: Port may terminate this Agreement.

C. Re-entry After Termination: If this Agreement is terminated for any reason, SSA's liability for damages shall survive such termination, and the rights and obligations of the parties shall be as follows:

1. SSA shall vacate Terminal 2 immediately, remove any property of SSA including any fixtures which SSA is required to remove, under Section 7.14 below, at the end of the Agreement term, perform any cleanup, alterations, or other work required to leave Terminal 2 in the condition required at the end of the term, and deliver all keys to the Port. Depreciation and wear from ordinary use for the purpose for which Terminal 2 was used need not be restored, but all repair for which SSA is responsible shall be completed to the latest practical date prior to such surrender.

2. The Port and SSA shall bear their own cost of negotiating, arbitrating, and litigating any dispute among themselves.

B. Any stevedoring company, other than SSA, and any other incidental beneficiaries of this Agreement, such as customers of the Port and SSA, shall be entitled to notify the Port of any practice of SSA which it feels is an Event of Default under this Agreement, including without limitation, any alleged discriminatory practices of SSA against other stevedoring companies. Upon such notice, and subject to the other terms of this Agreement, the Port shall attempt to determine whether an Event of Default exists, and upon such determination the Port shall notify SSA and SSA shall then attempt to remedy the Event of Default or contest the determination as SSA deems fit. A written notice shall then be sent to such third (3rd) party of the determinations by the Port that there is no Event of Default or that the Event of the Default has been remedied by SSA. After receipt of the Port's notice, such third (3rd) party may request a hearing at a regularly scheduled meeting of the Port's Commissioners at which it may request the Commissioners to review the Port's determination and require Port staff to request further remedy or arbitration in accordance with this Agreement.

Notwithstanding anything to the contrary in this Agreement, SSA and the Port are the only parties to the Agreement and as such are the only parties entitled to enforce the terms of this Agreement. The

sole and exclusive remedy and rights of third (3rd) parties, including the incidental beneficiaries stated above, under this Agreement are limited to the provisions of Section 7.01(B).

Section 7.02 - Assignment: No part of Terminal 2 or this Agreement may be assigned, nor may a right of use of any portion of Terminal 2 be conferred on any third person by any other means, without the prior written consent of Port. Any assignment or attempted assignment without Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law and to any sale of a controlling interest in the stock of SSA.

No consent in one instance shall prevent the provision from applying to a subsequent instance. Although any consent shall be the sole and exclusive prerogative of the Port, in determining whether to consent to an assignment the Port may consider the following factors: financial ability, business experience, and intended use.

Section 7.03 - Condemnation:

A. If Terminal 2 or any interest therein is taken as a result of the exercise of the right of eminent domain, this Agreement shall terminate as to such portion as may be taken. If the portion taken does not feasibly permit the continuation of the operation of Terminal 2 by SSA, SSA shall have the right to cancel. Such



cancellation shall be effective as of the date of taking. Port shall be entitled to that portion of the award as represented by the land and improvements owned by the Port.

Section 7.04 - Nonwaiver: Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

Section 7.05 - Labor Agreement: Any traditional longshore and warehouse work assignment provisions of the ILWU-PMA Agreements, dated July 1, 1984, are applicable to the signatories of the Agreement made between International Longshoremen's and Warehousemen's Union, Locals 8 and 40 and the Port of Portland, their lessees and assigns.

Section 7.06 - Force Majeure: To the extent proximately caused by force majeure, if SSA is unable in whole or in part to carry out its obligations under this Agreement, SSA shall not be deemed in default during the continuance of such inability, provided notice thereof is given to the Port. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders or restraints of the United States of America, the State of Oregon, or their respective departments, agencies, or officials, or any civil or military authority, insurrections, riots, volcanic eruptions, earthquakes, fires, storms, droughts, floods, explosions,

breakage to machinery, or accidents caused by third (3rd) parties to the Terminal 2 pier rendering it unusable, structurally unsound, or unsafe for the purpose for which it is intended, failure to maintain a draft of forty (40) feet below mean low water for the berth(s) at Terminal 2, or any other cause or event not reasonably within the control of SSA and not resulting from its negligence. SSA agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing SSA from carrying out this Agreement, provided that the settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of SSA and SSA shall not be required to make settlement of strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of SSA unfavorable to SSA.

Section 7.07 - Adherence to Law: SSA shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including laws governing its relationship with its employees, including but not limited to, laws, rules, regulations, and policies concerning Workers' Compensation and minimum and prevailing wage requirements.

Section 7.08 - Time of Essence: It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

Section 7.09 - Warranties/Guarantees: Except for those warranties specifically set forth herein, Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of Terminal 2, and it is agreed that Port will not be responsible for any loss, damage or costs which may be incurred by SSA by reason of any such physical condition.

A. Port shall use its best efforts to maintain a draft of forty (40) feet of mean low water for the berth(s) at Terminal 2 at no expense to SSA.

B. Port warrants that there is no latent defect or unsafe or unsound physical condition on Terminal 2 of which it or its employees and agents is, or should be, aware.

C. Port shall maintain the structural integrity of Terminal 2 and shall repair promptly any damage to Terminal 2 which would undermine its structural integrity or safe working conditions, subject to indemnification by SSA under Section 5.01 for damages caused by SSA.

Section 7.10 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

Section 7.11 - Consent of Port: Whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from the Port's Project Manager.



Section 7.12 - Notices: All notices required under this Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at The Port of Portland, P.O. Box 3529, Portland, Oregon 97208, and to SSA at Stevedoring Services of America, 5051 North Lagoon Avenue, Portland, Oregon 97217. Date of Service of such notice is date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

Section 7.13 - Modification: Any modification of this Agreement shall be mutually agreed upon and reduced to writing.

Section 7.14 - Fixtures:

A. All fixtures placed upon Terminal 2 by SSA during the term of this Agreement shall remain the property of SSA. Movable furniture, decorations, floor covering, other than hard surface bonded or adhesively fixed flooring, curtains, blinds, furnishing and trade fixtures shall also remain the property of SSA if placed on Terminal 2 by SSA.

B. On or before the date this Agreement terminates because of expiration of the original or a renewal term by passage of time, or an Event of Default, SSA shall remove any or all fixtures which remain the property of SSA and shall repair any physical damage resulting from the removal. If SSA fails to do so, this shall be an abandonment of Terminal 2, and the Port may retain such property and all rights of

SSA with respect to Terminal 2 shall cease or, by notice in writing given to SSA within twenty (20) days after removal was required, the Port may elect to remove such property. SSA shall be liable to the Port for the cost of removal, transportation to storage, and storage, with interest at eighteen percent (18%) per annum on all such expenses from the date of expenditure by the Port.

Section 7.15 - No Pledge of SSA Interest: SSA shall not pledge its interest in this Agreement.

Section 7.16 - Entire Agreement: It is understood and agreed that this instrument and the attachments, schedules and exhibits thereto contain the entire Agreement between the parties hereto with respect to Terminal 2. It is further understood and agreed by SSA that Port and Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth and that no claim or liability or cause for termination shall be asserted by SSA against Port for, and Port shall not be liable by reason of the breach of any representations or promises prior to the Effective Date not expressly stated in this Agreement, any other written or oral agreement with Port existing prior to the Effective Date being expressly waived by SSA, it being understood that the Port requires this Agreement to be in writing and adopted by Port Commission.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

The parties hereto further acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement on the day and year first-above mentioned.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

BRADY HAMILTON STEVEDORE COMPANY, dba  
STEVEDORING SERVICES OF AMERICA

By [Signature]

F. D. Smith  
President

Its [Signature]

Dennis Specht

By [Signature]

Secretary

THE PORT OF PORTLAND

By [Signature]  
President

By [Signature]  
John A. Elorriaga  
Assistant Secretary

Lee Underwood

APPROVED AS TO  
LEGAL SUFFICIENCY

[Signature]

Counsel for  
The Port of Portland  
Dean Phillips

APPROVED BY COMMISSION ON:

July 10, 1985

07/26/85  
3191L:12F250



EXHIBIT C

MANAGEMENT AGREEMENT FOR THE  
PORT OF PORTLAND'S BOND-FINANCED  
MARINE FACILITY

This MANAGEMENT AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between THE PORT OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred as "Port," and BRADY HAMILTON STEVEDORE COMPANY dba STEVEDORING SERVICES OF AMERICA, INC., 5051 North Lagoon Avenue, Portland, Oregon 97217, a corporation duly organized under the laws of the State of Oregon, hereinafter referred to as "SSA."

W I T N E S S E T H:

WHEREAS, upon completion of certain bond financed improvements at Terminal 2 by the Port, SSA also desires to provide professional marine terminal management services for that portion of the facility which consists of approximately \_\_\_\_\_ (\_\_\_\_) square feet and improved with certain facilities and which is more completely described in Port Drawing No. \_\_\_\_\_ attached hereto as Exhibit A, and made a part hereof, hereinafter referred to as "Bond Financed Improvements;" and

WHEREAS, the Port desires to enter into a management agreement with a qualified company for its Bond-Financed Improvements provided that certain conditions are met which are necessary for the community's best interests; and

WHEREAS, SSA is willing to use its best efforts in furthering the efficient utilization of the Bond-Financed Improvements in worldwide commerce, market the Bond-Financed Improvements capacities, and provide professional marine terminal management services for the Bond-Financed Improvements; and

WHEREAS, the parties set forth their respective responsibilities for the management of the existing facilities at Terminal 2 in a Management Agreement dated July \_\_\_\_, 1985 (hereinafter "Terminal 2 Management Agreement") the terms and provisions of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

#### ARTICLE I - BASIC TERMS

Unless expressly modified by Article II of this Agreement, all terms and conditions set forth in the Terminal 2 Management Agreement shall apply to this Management Agreement for Bond-Financed Improvements and are hereby incorporated herein by reference.

## ARTICLE II - ADDITIONAL TERMS

Section 2.01 - Initial Term: For the Bond-Financed Improvements as set forth in Exhibit A, the term of this Agreement shall commence on the date the Bond-Financed Improvements are complete and ready for use and shall continue for a period of one (1) year. The Port shall notify SSA in writing thirty days prior to the date upon which the Bond-Financed Improvements are complete and ready for use.

Section 2.02 - Renewal Period: At the end of the initial one (1) year term for the Bond-Financed Improvements, if SSA is not then in default, Port and SSA agree to negotiate in good faith on terms mutually agreeable to the parties, a renewal of the agreement for the Bond-Financed Improvements for an additional two (2) year period. Notwithstanding any other provision of the Terminal 2 Management Agreement, the failure of the parties to reach a mutually agreeable renewal or extension of the term of this Management Agreement for the Bond-Financed Improvements shall not be subject to arbitration, any third party intervention, or subject to specific performance.

Section 2.03 - Sharing of Gross Receipts: SSA and the Port agree that the Bond-Financed Improvements, financed with general obligation bond proceeds, will not have been operated for a sufficient period to establish, with reasonable certainty, the amount of expected annual gross revenues and expenses. For one (1) year after the Bond-Financed Improvements, as described in Exhibit A, are complete and ready for use, the sharing of Gross Receipts as set forth in Section 3.03 of the Terminal 2 Management Agreement shall apply to the sharing of Gross Receipts attributable to the Bond-Financed Improvements.



Section 2.04 - Minimum Guarantee: Other than as set forth in Section 3.05 of the Terminal 2 Management Agreement, there shall be no minimum amount of Gross Receipts attributable to the Bond-Financed Improvements guaranteed to the Port by SSA during the first year of this Management Agreement. After the end of the first year, the parties shall negotiate a mutually agreeable level of compensation for SSA's management of the Bond-Financed Improvements which shall be based on a reasonable periodic flat fee.

Section 2.05 - Port's Right to Cancel: The Port retains the right to cancel, for whatever reason, this Management Agreement for the Bond-Financed Improvements at any time without penalty upon ninety (90) days written notice.

Section 2.06 - Taxability of Port Bonds: The Management Agreement for the Bond-Financed Improvements will be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Bond-Financed Improvements. It is an express condition precedent to the execution of this Agreement that the Port obtain from competent legal counsel of its choosing an opinion that interest earned by holders of the Port General Obligation Bonds will not be includable in such holder's Gross Income under Internal Revenue Code Section 103, as amended. The parties shall negotiate the final terms of this Agreement with such terms as are necessary to obtain such legal opinion, but only if such terms are also mutually agreeable to both the Port and SSA.

The Port agrees to expeditiously seek an opinion from its Bond Counsel to clarify the allowable terms of the Management Agreement for the Bond-Financed Improvements.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

BRADY HAMILTON STEVEDORE COMPANY, dba THE PORT OF PORTLAND  
STEVEDORING SERVICES OF AMERICA

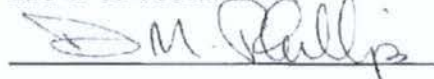
By \_\_\_\_\_

By \_\_\_\_\_  
President

By \_\_\_\_\_

By \_\_\_\_\_  
Assistant Secretary

APPROVED AS TO  
LEGAL SUFFICIENCY



Counsel for  
The Port of Portland

APPROVED BY COMMISSION ON:

\_\_\_\_\_

07/26/85  
3191L:12F250

# EXHIBIT D

The charges for providing the following services/equipment/facilities shall be divided between SSA and the Port on the following basis:

|   | <u>SSA</u>                                     | <u>Port</u> |
|---|--|-------------|
| Banding   | 100%   | 0%          |
| Cargo board rental  |  |             |
| SSA cargo boards  | 100%   | 0%          |
| Port cargo boards   | 0%   | 100%        |
| Copies of documents   |  |             |
| Provided by SSA   | 100%   | 0%          |
| Provided by Port  | 0%   | 100%        |
| Electricity   | 100%   | 0%          |
| Labeling, marking, stenciling, tagging, or recording serial numbers                           | 100%   | 0%          |
| Marine Fire and Safety Association assessment   | 0%   | 100%        |
| Prepaid intermodal freight service charge   |  |             |
| Performed by SSA  | 100%   | 0%          |
| Performed by Port   | 0%   | 100%        |
| Providing services under man-hour and/or equipment rental rates                               |  |             |
| Provided by SSA   | 100%   | 0%          |
| Provided by Port  | 0%   | 100%        |
| Sorting   | 100%   | 0%          |
| Storage (to be reviewed and mutually agreed upon 12 months after this agreement is effective) | 50%  | 50%         |
| Telephone   | 100%   | 0%          |
| Transportation documentation service fee  |  |             |
| Performed by SSA  | 100%   | 0%          |
| Performed by Port   | 0%   | 100%        |
| Water   | 100%   | 0%          |
| Services/Equipment/Facilities, not described above -  | To be mutually agreed between SSA and the Port |             |

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224-010806-001

AMENDMENT NO. 1 TO  
FMC AGREEMENT NO. 224-010806  
MANAGEMENT AGREEMENT BETWEEN THE PORT OF PORTLAND AND  
STEVEDORING SERVICES OF AMERICA FOR  
TERMINAL 2 MARINE FACILITY



THIS AMENDMENT NO. 1 is made and entered into on this 2nd day of May, 1989, by and between THE PORT OF PORTLAND, a governmental corporation of the State of Oregon (hereinafter referred to as "Port"), and STEVEDORING SERVICES OF AMERICA, INC., a corporation duly organized under the laws of the State of California (hereinafter referred to as "SSA").

W I T N E S S E T H:



WHEREAS, the Port and SSA entered into a management agreement for the Port's Terminal 2 facility dated July 2, 1985 (hereinafter referred to as "Original Agreement"); and

WHEREAS, the Port and SSA wish to amend the Original Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Section 3.02 of the Original Agreement is deleted and the following paragraph shall be inserted and become the amended Section 3.02:

POPT2100046

Section 3.02 - Terminal Tariff and Dockage Charges: The Port and SSA agree that during the Agreement term and any extensions thereof, the Port reserves the exclusive right to determine the rate for wharfage and dockage charges on all vessels berthing at Terminal 2 in accordance with the Port of Portland published tariff in effect at the time of berthing, subject to any discounts or revenue sharing of wharfage and dockage charges, if agreed to by SSA, its customers, and the Port. All published tariff rates applicable to Terminal 2, including any discounts shall at all times be competitive with rates in effect by the Port at its other facilities, whether or not such facilities are operated by the Port.

2. Section 3.03 of the Original Agreement is deleted and the following paragraphs shall be inserted and become the new Section 3.03:

Section 3.03 - Sharing of Gross Receipts: The Parties shall share all Gross Receipts in accordance with the below formula. The lines and shippers named below are for identification purposes only and are not bound by the terms and conditions of this Agreement.

A. For all Gross Receipts generated by and attributed to each of the following Port existing customers defined below, regardless of its character as a shipper, agent, or owner of the cargo, or line used:

Share of Gross Receipts

80% to Port

20% to SSA

For purposes of this Section 3.03A, existing customers are defined as:

1. Hong Kong Islands Line.
2. Boise Cascade Export Cargo--regardless of the line used.
3. Italian Line.
4. D'Amico Line.
5. Trade Ocean Line.
6. Shipping Corporation of India.
7. Scindia Steam Navigation Co., Ltd.
8. Naviera Interamericana Navicana S.A.
9. Pacific Australia Direct Line (PAD) vessels.



B. For all Gross Receipts attributable to customers not calling at the Port within the previous twelve (12) months, the below-listed revenue split shall apply.

Share of Gross Receipts

40% to Port                      60% to SSA

C. For any and all customers not described in Section 3.03(A) or (B) above, the below-listed revenue split shall apply.

Share of Gross Receipts

60% to Port                      40% to SSA

D. Any shifting of existing Port customers to or from Terminal 2 during the term of this Agreement shall be effected only upon mutual consent of the parties.

E. Other Revenues:

1. All services and facility revenues during the term of this Agreement shall belong to SSA.
2. All truck loading and unloading revenues during the term of this Agreement shall belong to SSA.

3. All railcar loading/unloading revenues during the term of this Agreement shall belong to SSA.
4. All miscellaneous labor-related revenues during the term of this Agreement shall belong to SSA.
5. The charges for miscellaneous items described in Exhibit D, shall be divided in accordance with that Exhibit.

F. For all Gross Receipts attributable to or generated by Hawaiian Marine Lines ("HML") controlled barge operations, the below listed revenue split shall apply:

Share of Gross Receipts

20% to Port

80% to SSA

In the event SSA becomes contract stevedore for HML or SSA's discounts to HML change materially, this percentage share shall be renegotiated by the parties.

3. Section 3.06 of the Original Agreement is deleted and the following paragraph shall be inserted and become the amended Section 3.06:

Section 3.06 - Time and Place of Payments:

A. SSA shall expeditiously invoice all Terminal 2 customers and perform all of the billing and collection of the Gross Receipts.

B. SSA shall pay Port, within the time limits specified for the payment of wharfage and dockage in the Port's then current marine terminals tariff subject to any applicable discounts or revenue sharing, the Port's share of Gross Receipts specified in Section 3.03.

C. Payments made by SSA to the Port shall be accompanied by a copy of all invoices billed by SSA to third parties for marine terminal services shared under this Agreement.

D. Payment shall be to Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as Port may designate. Subject to Section 3.07, all amounts not paid by SSA when due shall bear interest at the rate set forth in the Port's then current marine terminal tariff.

4. Except as specifically amended herein, all provisions of the Original Agreement shall remain in full force and effect.




5. This Agreement shall be filed by the Port with the Federal Maritime Commission (FMC) pursuant to Section 5 of the Shipping Act of 1984, as amended and Section 15 of the Shipping Act of 1916. This Agreement shall be effective the day it is received by the FMC. If the FMC rejects this Agreement, this Agreement shall be of no force or effect. The foregoing shall also apply to each amendment to this Agreement filed by the FMC pursuant to Section 5 of the Shipping Act of 1984, as amended and Section 15 of the Shipping Act of 1916. BW

IN WITNESS WHEREOF, the parties hereto have subscribed their names.


STEVEDORING SERVICES OF AMERICA, INC.      THE PORT OF PORTLAND

By   
F. D. (Ricky) Smith

Its President

By   
Bruce L. Whisnant

Its Senior Vice President

By  BR  
Executive Director  
Robert L. Woodell

By   
Assistant Secretary  
Darla Swensen

APPROVED AS TO LEGAL SUFFICIENCY

  
Counsel for  
The Port of Portland  
M. Brian Playfair

03/15/89  
4219L:12L010

224 010006-002

AMENDMENT NO. 2 TO

FMC AGREEMENT NO. 224-010806

RECEIVED

MANAGEMENT AGREEMENT BETWEEN THE PORT OF PORTLAND AND

STEVEDORING SERVICES OF AMERICA FOR

TERMINAL 2 MARINE FACILITY

'90 JUN 25 AM 3:31

FEDERAL  
COMMERCIAL  
OFFICE OF THE  
MARITIME COMMISSION

THIS AMENDMENT NO. 2 is made and entered into on this 30<sup>th</sup> day of may, 1990, by and between THE PORT OF PORTLAND, a governmental corporation of the State of Oregon (hereinafter referred to as "Port"), and STEVEDORING SERVICES OF AMERICA, INC., a corporation duly organized under the laws of the State of California (hereinafter referred to as "SSA").

W I T N E S S E T H:

WHEREAS, the Port and SSA entered into a management agreement for the Port's Terminal 2 facility dated July 2, 1985 (hereinafter referred to as "Original Agreement"), and Amendment No. 1 dated May 2, 1989; and

WHEREAS, the Port and SSA wish to amend the original Agreement and Amendment No. 1;



POPT2100053

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I - DESCRIPTION OF PREMISES

ARTICLE I, Section 1.01 - Description of Premises, of the Original Agreement is replaced with the following:

Section 1.01 - Description of Premises:

The Premises subject to this Management Agreement, shall consist of approximately 55 acres, four marine terminal berths (Berths 203, 204, 205, 206); paved and lighted backup storage area, a gearlocker building, and four warehouses at Terminal 2, all shown on Port Drawing No. 72 90-4 1/2 (LP), attached hereto as Exhibit A and made a part hereof, and hereinafter referred to as "Premises."

ARTICLE II - PAYMENTS

ARTICLE III, Section 3.03 - Sharing of Gross Receipts, of Amendment No. 1 is amended by adding the following:

G. A surcharge of \$4 per container shall be assessed SSA by the Port on each container (empty or full) loaded on liner service cellularized vessels in the event that such service occurs at Terminal 2.



ARTICLE III, Section 3.05 - Minimum Guarantee,  
Subsection F, of the Original Agreement is replaced with the following:

F. During the first year of the first Renewal Period of the Amended Agreement, the Minimum Annual Guarantee shall be \$1,104,480. On July 1 of each year, the Minimum Guarantee shall be adjusted based on the percentage change in the consumer price index for all urban consumers (CPIU) for the previous year; provided, however, that the Minimum Annual Guarantee shall never be less than \$1,104,480 and the increase shall not exceed \$55,000 annually.

ARTICLE III, Section 3.05 - Minimum Guarantee, of the Original Agreement is amended by adding the following:

G. In the event Puget Sound Tug and Barge company, dba Hawaiian Marine Lines, (HML) or its successors or assigns terminates service at Terminal 2 during the first Renewal Period of this Agreement, the Minimum Annual Guarantee shall be reduced for a 12-month period of time commencing as of the first day of the month following the HML service termination, said reduction to be in the amount of one-half of the Port's share of the HML-generated revenue in the preceding 12-months in which HML called Terminal 2. At the end of the 12-month period of

reduction, the Minimum Annual Guarantee reverts back to the Minimum Annual Guarantee in effect prior to the HML pull-out, subject to any escalation.

### ARTICLE III

This Agreement shall be filed by the Port with the Federal Maritime Commission (FMC) pursuant to Section 5 of the Shipping Act of 1984, as amended, and Section 15 of the Shipping Act of 1916. This Agreement shall be effective July 1, 1990, for a five-year renewal period as described in Section 2.02 of the Original Agreement. If the FMC rejects this Agreement, this Agreement shall be of no force or effect. The foregoing shall also apply to each amendment to this Agreement filed by the FMC pursuant to Section 5 of the Shipping Act of 1984, as amended, and Section 15 of the Shipping Act of 1916.

Except as modified herein, the Lease Agreement between the parties dated July 2, 1985, and Amendment No. 1 dated May 2, 1989, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have subscribed  
their names.

STEVEDORING SERVICES OF  
AMERICA, INC.

By F.D. Smith  
F. D. (Ricky) Smith  
President

Bruce L. Whisnant  
Bruce L. Whisnant  
Senior Vice President

THE PORT OF PORTLAND

By Robert L. Woodell  
Robert L. Woodell  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

Dean Phillips  
Dean Phillips, Counsel  
for the Port of Portland

G\Docs  
SSAAMEND



224-010806-003

AMENDMENT NO. 3  
TO FMC AGREEMENT NO. ~~224-200209~~  
MANAGEMENT AGREEMENT  
BETWEEN  
STEVEDORING SERVICES OF AMERICA  
AND  
THE PORT OF PORTLAND

RECEIVED

JAN 10 1992

THIS AMENDMENT NO 3. is entered into on this 9<sup>th</sup> day of January, 1992,  
by and between STEVEDORING SERVICES OF AMERICA, a corporation duly organized  
under the laws of the State of California (hereinafter SSA), and THE PORT OF  
PORTLAND, a municipal corporation duly organized and existing under the laws of the State  
of Oregon (hereinafter PORT).

WITNESSETH



WHEREAS, the PORT and SSA have entered into a Management Agreement for the  
operation of the PORT's Terminal 2 facility (hereinafter referred to as "Original Management  
Agreement") filed with the Federal Maritime Commission on September 23, 1985. This  
Original Management Agreement has been amended by Amendment No. 1 filed with the  
Federal Maritime Commission on May 8, 1989, and Amendment No. 2 filed with the Federal  
Maritime Commission on June 25, 1990; and

WHEREAS, SSA and Sause Brothers Ocean Towing Company, Inc. (hereinafter  
SAUSE) have entered into an Agreement that provides for a monetary exchange between SSA

and SAUSE; and

WHEREAS, SSA and the Port now wish to alter the distribution of "Gross Receipts" as that phrase is defined in Section 3.01 of the Original Management Agreement and in Amendments No. 1 and No. 2; and

WHEREAS, SSA and PORT have negotiated certain terms and conditions contained herein and that they are required to be filed with the Federal Maritime Commission, pursuant to 45 USC §801 et. seq.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

I.

ARTICLE II, Section 2.01 - Initial Term, of the Original Agreement is amended by adding the following sentence:

For purposes of this Agreement, "Contract Year" shall commence on July 1 and end on June 30. In light of this alteration, the PORT recognizes that the Minimum Annual Guarantee should reflect this altered time period and the loss of the period between July 1 and August 11, 1992. Therefore, the Minimum Annual Guarantee shall be \$1,026,060.28 for Contract Year 1991-1992.

II.

ARTICLE III, Section 3.03 - Sharing of Gross Receipts, of Amendments No. 1 and No. 2 is amended by deleting subsection G in its entirety and replacing it with the following paragraph and adding the following subsections H and I:

G. A surcharge of \$4 per container shall be assessed SSA by the PORT on each container (empty or full) loaded on liner service cellularized vessels that call Terminal 2; however, beginning with the date of this Amendment No. 3 and continuing through December 31, 1992, no surcharge on containers shall be charged to ships calling Terminal 2 by Philippines, Micronesia & Orient Navigation Company.

H. For all Gross Receipts attributable to or generated by SAUSE's barge operations at Terminal 2, the following revenue split applies:

Share of Gross Receipts

20% to Port

80% to SSA

The Port reserves the right to review the SSA/SAUSE agreement from time to time as appropriate, and should SSA and SAUSE alter, amend or modify their agreement in any way, the parties shall renegotiate the above revenue split.



I. SSA agrees to participate in any revenue sharing agreement the PORT enters into with a steamship line calling Terminal 2, in accordance with SSA's applicable revenue split per Section 3.03 of the Agreement and its Amendments, so long as SSA is a party to the negotiations and notifies the PORT in writing of its intention to participate.

III.

ARTICLE III, Section 3.05 - Minimum Guarantee: Paragraph G on page 3 of Amendment No. 2 is deleted in its entirety.

V

Amendment No. 3 is to be filed with the Federal Maritime Commission (FMC) and shall be effective on the day it is filed with and by the FMC.

IV.

Except as specifically modified by the terms of this Amendment No. 3, the Original Management Agreement as well as Amendments No. 1 and No. 2 thereto shall remain in full force and effect.

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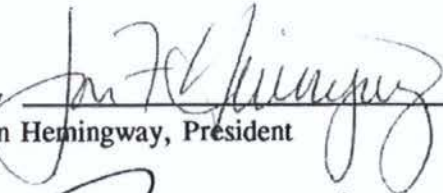
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IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 this 9<sup>th</sup> day of January 1992.

STEVEDORING SERVICES OF  
AMERICA

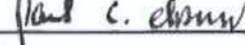
THE PORT OF PORTLAND

By   
Jon Hemingway, President

By   
Mike Thorne, Executive Director

By   
Bruce L. Whisnant,  
Senior Vice President

APPROVED AS TO LEGAL  
SUFFICIENCY

By   
Paul Elsher  
Counsel for The Port of Portland

APPROVED BY COMMISSION ON:

1-8-92

224

200020

LEASE AGREEMENT FOR THE  
PORT OF PORTLAND'S BOND-FINANCED  
IMPROVEMENTS AT TERMINAL 2



THIS ~~LEASE~~ <sup>RECEIVED</sup> made and entered into this 11<sup>th</sup> day of June ~~1987~~ <sup>1987</sup> ~~AUG 17~~ <sup>AUG 17</sup> by and between THE PORT OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred to as "Port," and STEVEDORING SERVICES OF AMERICA, INC., 5051 North Lagoon Avenue, Portland, Oregon 97217, a corporation duly organized under the laws of the State of California, hereinafter referred to as "SSA."

W I T N E S S E T H:

WHEREAS, the Port and SSA entered into a management agreement for the Port's existing multiple-user general cargo facilities at Terminal 2 on July 10, 1985, hereinafter referred to as "Original Agreement;" and

WHEREAS, upon completion of certain bond-financed improvements at Terminal 2 by the Port, SSA will provide professional marine terminal management services in accordance with the Original Agreement; and

WHEREAS, the Port and SSA desire to enter into a lease agreement for certain gearlocker space which was financed by the Port's General Obligation Bonds; and



POPT2100063



### ARTICLE III - RENTAL

Section 3.01 - Basic Rent: SSA shall pay to Port as rent the sum of One Thousand and Forty One Dollars and Sixty Seven Cents (\$1,041.67) per month. Rent shall be payable on the tenth (10th) day of each month in advance, except that rent for the first and last months has been paid upon the execution of this Lease and Port acknowledges receipt of this sum.

Section 3.02 - Rent on Extension of Term: In the event that the term of this Agreement extends beyond March 12, 1990, the rent will be adjusted to reflect the then fair market rent but no less than \$1,041.67 per month, and every three years thereafter.

Section 3.03 - Place of Payments: Payment shall be to Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as Port may designate. All amounts not paid by Lessee when due shall bear a delinquency charge of eighteen percent (18%) per annum. The delinquency charge rate of eighteen percent (18%) on overdue accounts is subject to periodic adjustment to reflect the Port's then current delinquency charge rate charged on overdue accounts.

### ARTICLE IV - GENERAL CONDITIONS

Section 4.01 - Delivery: Should Port be unable to deliver possession of the Premises on the date fixed for the commencement of the term, SSA shall owe no rent until notice from Port tendering possession to SSA. If possession is not so tendered within sixty (60) days following commencement of the term, then SSA may elect to cancel this Lease by notice to Port within ten (10) days following

Section 4.04 - Uses: The SSA will not use or permit in said Premises anything that will increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, which would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from said Premises; or permit anything to be done upon said Premises in any way tending to create a nuisance or to disturb any other tenants of the building, or to injure the reputation of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any immoral or illegal purposes; and that the SSA will comply at SSA's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

Section 4.05 - Liability: SSA agrees fully to indemnify, save harmless, and defend the Port, its commissioners, officers, and employees from and against that portion of all losses, expenses, claims and actions, including all expenses incidental to the investigation and defense thereof of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property, proximately caused by the willful malfeasance or negligence of SSA, or its employees or agents in the use or occupancy of the Premises; provided that the Port

shall give to the SSA prompt and reasonable notice of any such claims or actions known to Port, and the SSA shall have the right to investigate, compromise, and defend same, provided such claim is not proximately caused by the negligence of the Port and its employees or agents.

In the event that there is any bodily injury at, or property damage to any portion of the Premises caused by SSA or any third (3rd) party, SSA shall immediately notify the Port's Claims Manager and shall cooperate in the Port's investigation of such incident. SSA shall make all reports or documents concerning the incident, except for medically and legally privileged information, available to the Port and cooperate with the Port in investigating, compromising or litigating the claim against third (3rd) parties.

For any property damage done to the Premises proximately caused by the negligence of SSA or the breach of this Agreement, SSA shall be given the option of repairing the damage or having the Port repair the damage at SSA's expense.

Section 4.06 - Vacation: Upon vacation or abandonment of the Premises by the SSA prior to the expiration of the Lease term without written consent of the Port endorsed hereon, the Port may forthwith enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same and that for the purpose of such reletting the said Port is authorized at the cost of the SSA to make any repairs, changes, alterations, or additions in or to said demised



Premises which may be necessary in the opinion of the Port for the purpose of such reletting, and such entry and control shall not release the SSA from the obligations herein, but SSA shall nevertheless remain liable and continue bound, unless the Port, at Port's election, shall cancel the Lease and in the event cancellation shall be effected and Port and SSA released from all obligations thereunder thereafter to accrue, upon the mailing of such notice of cancellation by Port to SSA at SSA's last known address.

Section 4.07 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the SSA or any of the SSA's agents or employees or other persons claiming the right of admittance.

Section 4.08 - Inspection: The Port and the Port's agents, janitors, workmen, and engineers may retain and use a pass-key to the Premises described herein to enable them to examine said Premises from time to time with reference to any emergency or to the general maintenance of said Premises, or for the purposes of exhibiting the same.

Section 4.09 - Premises Care: The SSA shall at all times take good care of the demised Premises and shall keep and maintain the leased premises and all improvements of any kind, which may be erected, installed, or made thereon by SSA, in good and substantial repair and condition. SSA shall provide proper containers for trash and garbage and shall keep the leased premises free and clear of rubbish, debris, and litter at all times. Port shall at all times during ordinary business hours have the right to enter upon and inspect such

premises. Such inspections shall be made only at a mutually agreeable time.

Section 4.10 - Surrender: At the expiration or sooner termination of this Lease, the SSA will surrender and deliver up said Premises to the Port or those having the Port's estate therein, in the same condition as the SSA now receives said Premises, ordinary wear and tear and damage by fire and the elements alone excepted.

Section 4.11 - Action/Suit: If any suit or appeal thereof is instituted by either party for the enforcement of any covenant contained in this Lease, the prevailing party shall recover, in addition to costs and disbursements, such attorneys' fees as the court may adjudge reasonable to be allowed in such suit or action or appeal thereof.

Section 4.12 - Events of Default:

The following shall be "Events of Default:

A. Default in Payments: Upon the Port giving SSA ten (10) days written notice after failure of SSA to make any payment or other charge within ten (10) days after it is due.

B. Default in Other Covenants: Failure of SSA to comply with any term or condition or fulfill any obligation of this Agreement, other than the payment of rent or other charges, within ten (10) days after written notice by Port specifying the nature of the default with reasonable particularity; provided, however, that, if the default is

of such a nature that it cannot be completely remedied within the ten (10) day period, such default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency: Insolvency of SSA; an assignment by SSA for the benefit of creditors; the filing by SSA of a voluntary petition in bankruptcy; an adjudication that SSA is bankrupt or the appointment of a receiver of the properties of SSA; the filing of an involuntary petition of bankruptcy and failure of SSA to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on SSA's interest in this Agreement and failure of SSA to secure discharge of the attachment or release of the levy of execution within ten (10) days.

D. Abandonment: Failure of SSA for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Agreement unless such failure is excused under other provisions of this Agreement.

Section 4.13 - Notice of Default: If the rent shall be in arrears for a period of ten (10) days; or if the SSA fails to keep or perform any of the covenants or conditions of this Lease; or if the leasehold interest of the Lessee shall be attached or levied on under execution; or if a petition is filed by Lessee for an arrangement with his creditors under Chapter 11 of the Bankruptcy Act; or if the Lessee shall be declared bankrupt or insolvent according to law; or if any



assignment of the Lessee's property shall be made for the benefit of creditors, or otherwise, or if the Lessee fails to make prompt payment of any amounts due the Port in connection with the Lessee's occupancy of the Premises, then, and in any of said events, the Port may at the Port's option at once, without notice to the Lessee or any other person, terminate this Lease, and upon the termination of said at the option of the Port, as aforesaid, or at the expiration of this Lease, and upon the termination of said Lease by its terms, the Lessee will at once surrender possession of said Premises to the Port and remove all the Lessee's effects therefrom; and if such possession be not immediately surrendered, the Port may forthwith enter into and on said Premises and repossess them as of the Port's former estate and expel the Lessee, or those claiming under the Lessee, and remove the effects of any of them, forcibly if necessary, and lock said Premises, without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenants; and that in such event the Lessee expressly waives the service of any notice of intention so to terminate this Lease or to retake the Premises, and waives service of any demand for payment of rent or for possession and of any and every other notice or demand prescribed by any law of the State of Oregon.

Section 4.14 - Remedies on Default: In the event of termination on default, the Port shall be entitled to request immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, any excess of the value of the SSA's obligations to pay rent under this Lease, plus the reasonable cost of

reentry and reletting, including, without limitation, the cost of any cleanup, refurbishing, removal of the SSA's property and fixtures or any other expense occasioned by the SSA's failure to quit the demised Premises upon termination or to leave them in the required condition, any remodeling costs, attorneys' fees, court costs, broker commissions, and advertising costs, plus the unpaid cost of any tenant improvements being amortized over the term of this Lease, plus the amount of the loss of reasonable rental value from the date of default until a new tenant has been, or, with the exercise of reasonable diligence, could have been secured not exceed ninety (90) days.

Section 4.15 - Liens: The SSA shall not suffer or permit any mechanic's lien to be filed against the fee of the demised Premises nor against the SSA's leasehold interest in said Premises by reason of work, labor, services, or materials thereof through or under the SSA, and nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of the Port, express or implied, by inference or otherwise to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the demised Premises or any part thereof, nor as giving the SSA any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's lien against the fee of the demised Premises. If any such mechanic's lien shall at any time be filed against demised Premises, the SSA shall cause the same to be discharged of record within twenty (20) days after the date of filing the same.

Section 4.16 - Holding Over: If the SSA shall hold over after the expiration of the term of this Lease, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, the SSA shall remain bound by all terms, covenants, and agreements hereof, except that the tenancy shall be one from month to month.

Section 4.17 - Utilities: SSA shall promptly pay any charges for sewer, water, gas, electricity, telephone, and all other charges for utilities which may be furnished to the leased premises.

Section 4.18 - Regulations: The Port, for the proper maintenance of said building; the rendering of good service, and the providing of safety, order, and cleanliness, may make and enforce regulations appropriate for such purposes but not in enlargement of or inconsistent with the terms, covenants, and conditions of this Lease.

Section 4.19 - Waiver: Any waivers shall be in writing. The covenants of this Lease are continuing covenants and the waiver by the Lessor of breaches of said covenants shall not be deemed a waiver of subsequent breaches thereof.

Section 4.20 - Modification: This Lease may not be modified except by endorsement in writing attached to this Lease, dated and signed by all the parties hereto, and Port shall not be bound by any oral or written statement of any servant, agent, or employee modifying this Lease.



Section 4.21 - Parties: The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto, and the words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become parties hereto.

Section 4.22 - Subordination: This Lease shall be subject and subordinate to such liens and encumbrances as are now on or as Port may hereafter impose on the land and building, and the Lessee shall upon request of Port, execute and deliver agreements of subordination consistent herewith.

Section 4.23 - Taxes: Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the State, County, City, or any other tax levying body upon any taxable interest by SSA acquired in this Agreement or any taxable possessory right which SSA may have in Premises or the improvements thereon by reason of SSA occupancy thereof as well as all taxes on all taxable property, real or personal, owned by SSA in or about said Premises, provided that SSA may, in good faith, contest the levying of such taxes and in such event may permit the taxes so contested to remain undischarged and unsatisfied during the period of such contest. Upon making such payments, SSA shall give to the Port a copy of the receipts and vouchers showing such payment. Upon any termination of tenancy, all

taxes then levied or then a lien on any of said property or taxable interest therein shall be paid in full without proration by SSA forthwith or as soon as a statement thereof has been issued by tax collector.

Section 4.24 - Insurance: SSA shall maintain comprehensive, general and automobile liability insurance for the protection of SSA directors, officers, servants, and employees, insuring SSA against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to or occasioned by reason of the lease of the Premises with insurance of not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit. The policy will cover the legal, contractual, and assumed liability of the SSA pursuant to this Agreement. Such insurance shall not be invalidated by any act or neglect or breach of contract by SSA.

SSA shall maintain in force Worker's Compensation insurance, including coverage for Employer's Liability and Longshore and Harbor Worker's Compensation Act.

SSA shall furnish to the Port a certificate, which shall be consistent with SSA's obligations under this Agreement, and shall furnish copies of the policies, if requested by the Port, evidencing the date, amount, and type of insurance that has been procured pursuant to this Agreement. All policies of insurance will provide for not less than thirty (30) days written notice to the Port and SSA before such policies may be revised, nonrenewed, or cancelled.

Section 4.25 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, P.O. Box 3529, Portland, Oregon 97208, and to the SSA, \_\_\_\_\_.

Date of Service of such notice is date such notice is deposited in a post office of the United States Port Office Department, postage prepaid.

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Section 4.26 - Warranty: Both parties warrant that, prior to execution and during the term of this Agreement, neither the Port's project manager for the Premises, the Terminal 2 Administration Building, or the Bond-Finance Improvements, nor any of the members of the Board of Commissioners of the Port, is a member of the Board of Directors or shareholders of, employed by, or otherwise associated with SSA or any entity affiliated with SSA; and that no SSA officer, director, employee, or agent is a member of the Board of Commissioners of the Port.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

STEVEDORING SERVICES OF AMERICA

By 

E. A. DeNike  
Chief Operating Officer

By \_\_\_\_\_

THE PORT OF PORTLAND

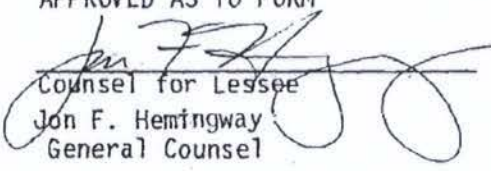
By 

PRESIDENT, Cecil Drinkward

By 

ASST. SECRETARY, Lee Underwood

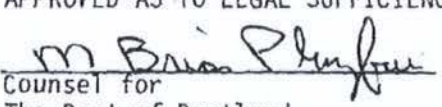
APPROVED AS TO FORM

  
Counsel for Lessee

Jon F. Hemingway  
General Counsel

02/09/87  
3706L

APPROVED AS TO LEGAL SUFFICIENCY

  
Counsel for

The Port of Portland  
M. Brian Playfair

Approved by Commission

Date 3-11-87

LEASE AGREEMENT FOR THE  
PORT OF PORTLAND'S BOND-FINANCED  
IMPROVEMENTS AT TERMINAL 2

THIS LEASE, made and entered into this 11<sup>th</sup> day  
of June, 1987, by and between THE PORT OF PORTLAND, a  
municipal corporation of the State of Oregon, hereinafter referred to  
as "Port," and STEVEDORING SERVICES OF AMERICA, INC., 5051 North  
Lagoon Avenue, Portland, Oregon 97217, a corporation duly organized  
under the laws of the State of California, hereinafter referred to as  
"SSA."

W I T N E S S E T H:

WHEREAS, the Port and SSA entered into a management agreement for  
the Port's existing multiple-user general cargo facilities at Terminal  
2 on July 10, 1985, hereinafter referred to as "Original Agreement;"  
and

WHEREAS, upon completion of certain bond-financed improvements at  
Terminal 2 by the Port, SSA will provide professional marine terminal  
management services in accordance with the Original Agreement; and

WHEREAS, the Port and SSA desire to enter into a lease agreement  
for certain gearlocker space which was financed by the Port's General  
Obligation Bonds; and

WHEREAS, SSA is willing to use its best efforts in furthering the efficient utilization of the Premises in worldwide commerce; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

#### ARTICLE I - PREMISES

Section 1.01 - Description: Port leases to SSA on the terms and conditions stated below, the Premises consisting of approximately six thousand (6,000) square feet which is on the date of this Lease improved and commonly known as the Terminal 2 gearlocker storage shed and more completely described in Port Drawing No. T-2, 86-5, 1-3, attached hereto and incorporated by referenced herein (hereinafter referred to as "Premises").

Section 1.02 - Use of Premises: SSA may use the Premises only to store SSA owned or leased stevedoring equipment. Any other storage including, but not limited to, storage of fuel in the Premises is prohibited.

#### ARTICLE II - ADDITIONAL TERMS

Section 2.01 - Initial Term: The term of this Agreement shall commence on its Effective Date and shall continue until July 10, 1990 or any extensions thereof, as provided in the Original Agreement.

Section 2.02 - Effective Date: This Agreement shall be filed by the Port with the Federal Maritime Commission (FMC). This Agreement



shall be effective as soon as practicable, but in no event later than twenty (20) days following the date that the FMC designates as its FMC effective date or the date upon which FMC designation of an effective date is no longer required (the "Effective Date"). If the FMC rejects this Agreement, this Agreement shall be of no force or effect. The foregoing shall also apply to each amendment to this Agreement which is required to be filed with the FMC.

Section 2.03 - Port's Right to Cancel: The Port retains the right to cancel, for whatever reason, this Lease Agreement at any time without penalty at end of each and every two year term, from the date the Lease Agreement becomes effective. Port shall exercise its right to cancel by giving SSA 120 days written notice.

Section 2.04 - Taxability of Port Bonds: This Lease Agreement shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Premises and other Bond-Financed Improvements. It is a material condition of this Lease that the Port's bond counsel, of the Port's choosing, be able to issue an opinion that interest earned by holders of the Port General Obligation Bonds will not be includable in such holder's Gross Income under Internal Revenue Code Section 103, as amended. The parties shall negotiate any modifications of this Lease to insure that its terms will permit the Port to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both the Port and SSA. In the event that the Port and SSA cannot agree upon the required modifications, the Port may terminate this agreement.

### ARTICLE III - RENTAL

Section 3.01 - Basic Rent: SSA shall pay to Port as rent the sum of One Thousand and Forty One Dollars and Sixty Seven Cents (\$1,041.67) per month. Rent shall be payable on the tenth (10th) day of each month in advance, except that rent for the first and last months has been paid upon the execution of this Lease and Port acknowledges receipt of this sum.

Section 3.02 - Rent on Extension of Term: In the event that the term of this Agreement extends beyond March 12, 1990, the rent will be adjusted to reflect the then fair market rent but no less than \$1,041.67 per month, and every three years thereafter.

Section 3.03 - Place of Payments: Payment shall be to Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as Port may designate. All amounts not paid by Lessee when due shall bear a delinquency charge of eighteen percent (18%) per annum. The delinquency charge rate of eighteen percent (18%) on overdue accounts is subject to periodic adjustment to reflect the Port's then current delinquency charge rate charged on overdue accounts.

### ARTICLE IV - GENERAL CONDITIONS

Section 4.01 - Delivery: Should Port be unable to deliver possession of the Premises on the date fixed for the commencement of the term, SSA shall owe no rent until notice from Port tendering possession to SSA. If possession is not so tendered within sixty (60) days following commencement of the term, then SSA may elect to cancel this Lease by notice to Port within ten (10) days following

expiration of the sixty (60) day period. Port shall have no liability to SSA for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

In the event Port shall permit SSA to occupy the Premises prior to the commencement date herein set forth, such occupancy shall be subject to all the provisions of this Lease. Said early possession shall not advance the termination date hereinabove provided.

Section 4.02 - Assignment: The SSA will not assign this Lease or any interest hereunder, and will not permit any assignment hereof by operation of law, and will not subrent or sublet said Premises or any portion thereof, and will not permit the use or occupancy of said Premises by other than the SSA and his agents and employees of the SSA without first obtaining the written consent of the Port, which consent shall not be unreasonably withheld.

Section 4.03 - Alterations: The SSA will make no installations, alterations, modification, or additions to said Premises without first obtaining the written consent of the Port and all additions, improvements, and fixtures, except the movable office furniture and trade fixtures of the SSA, made or added either by the SSA or Port shall be and remain the property of the Port; provided, however, the Port may require that the SSA remove upon termination of this Lease any additions made or fixtures added by the SSA at the SSA's expense.



Section 4.04 - Uses: The SSA will not use or permit in said Premises anything that will increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, which would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from said Premises; or permit anything to be done upon said Premises in any way tending to create a nuisance or to disturb any other tenants of the building, or to injure the reputation of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any immoral or illegal purposes; and that the SSA will comply at SSA's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

Section 4.05 - Liability: SSA agrees fully to indemnify, save harmless, and defend the Port, its commissioners, officers, and employees from and against that portion of all losses, expenses, claims and actions, including all expenses incidental to the investigation and defense thereof of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property, proximately caused by the willful malfeasance or negligence of SSA, or its employees or agents in the use or occupancy of the Premises; provided that the Port

shall give to the SSA prompt and reasonable notice of any such claims or actions known to Port, and the SSA shall have the right to investigate, compromise, and defend same, provided such claim is not proximately caused by the negligence of the Port and its employees or agents.

In the event that there is any bodily injury at, or property damage to any portion of the Premises caused by SSA or any third (3rd) party, SSA shall immediately notify the Port's Claims Manager and shall cooperate in the Port's investigation of such incident. SSA shall make all reports or documents concerning the incident, except for medically and legally privileged information, available to the Port and cooperate with the Port in investigating, compromising or litigating the claim against third (3rd) parties.

For any property damage done to the Premises proximately caused by the negligence of SSA or the breach of this Agreement, SSA shall be given the option of repairing the damage or having the Port repair the damage at SSA's expense.

Section 4.06 - Vacation: Upon vacation or abandonment of the Premises by the SSA prior to the expiration of the Lease term without written consent of the Port endorsed hereon, the Port may forthwith enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same and that for the purpose of such reletting the said Port is authorized at the cost of the SSA to make any repairs, changes, alterations, or additions in or to said demised

Premises which may be necessary in the opinion of the Port for the purpose of such reletting, and such entry and control shall not release the SSA from the obligations herein, but SSA shall nevertheless remain liable and continue bound, unless the Port, at Port's election, shall cancel the Lease and in the event cancellation shall be effected and Port and SSA released from all obligations thereunder thereafter to accrue, upon the mailing of such notice of cancellation by Port to SSA at SSA's last known address.

Section 4.07 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the SSA or any of the SSA's agents or employees or other persons claiming the right of admittance.

Section 4.08 - Inspection: The Port and the Port's agents, janitors, workmen, and engineers may retain and use a pass-key to the Premises described herein to enable them to examine said Premises from time to time with reference to any emergency or to the general maintenance of said Premises, or for the purposes of exhibiting the same.

Section 4.09 - Premises Care: The SSA shall at all times take good care of the demised Premises and shall keep and maintain the leased premises and all improvements of any kind, which may be erected, installed, or made thereon by SSA, in good and substantial repair and condition. SSA shall provide proper containers for trash and garbage and shall keep the leased premises free and clear of rubbish, debris, and litter at all times. Port shall at all times during ordinary business hours have the right to enter upon and inspect such



premises. Such inspections shall be made only at a mutually agreeable time.

Section 4.10 - Surrender: At the expiration or sooner termination of this Lease, the SSA will surrender and deliver up said Premises to the Port or those having the Port's estate therein, in the same condition as the SSA now receives said Premises, ordinary wear and tear and damage by fire and the elements alone excepted.

Section 4.11 - Action/Suit: If any suit or appeal thereof is instituted by either party for the enforcement of any covenant contained in this Lease, the prevailing party shall recover, in addition to costs and disbursements, such attorneys' fees as the court may adjudge reasonable to be allowed in such suit or action or appeal thereof.

Section 4.12 - Events of Default:

The following shall be "Events of Default:

A. Default in Payments: Upon the Port giving SSA ten (10) days written notice after failure of SSA to make any payment or other charge within ten (10) days after it is due.

B. Default in Other Covenants: Failure of SSA to comply with any term or condition or fulfill any obligation of this Agreement, other than the payment of rent or other charges, within ten (10) days after written notice by Port specifying the nature of the default with reasonable particularity; provided, however, that, if the default is

of such a nature that it cannot be completely remedied within the ten (10) day period, such default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency: Insolvency of SSA; an assignment by SSA for the benefit of creditors; the filing by SSA of a voluntary petition in bankruptcy; an adjudication that SSA is bankrupt or the appointment of a receiver of the properties of SSA; the filing of an involuntary petition of bankruptcy and failure of SSA to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on SSA's interest in this Agreement and failure of SSA to secure discharge of the attachment or release of the levy of execution within ten (10) days.

D. Abandonment: Failure of SSA for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Agreement unless such failure is excused under othe provisions of this Agreement.

Section 4.13 - Notice of Default: If the rent shall be in arrears for a period of ten (10) days; or if the SSA fails to keep or perform any of the covenants or conditions of this Lease; or if the leasehold interest of the Lessee shall be attached or levied on under execution; or if a petition is filed by Lessee for an arrangement with his creditors under Chapter 11 of the Bankruptcy Act; or if the Lessee shall be declared bankrupt or insolvent according to law; or if any

assignment of the Lessee's property shall be made for the benefit of creditors, or otherwise, or if the Lessee fails to make prompt payment of any amounts due the Port in connection with the Lessee's occupancy of the Premises, then, and in any of said events, the Port may at the Port's option at once, without notice to the Lessee or any other person, terminate this Lease, and upon the termination of said at the option of the Port, as aforesaid, or at the expiration of this Lease, and upon the termination of said Lease by its terms, the Lessee will at once surrender possession of said Premises to the Port and remove all the Lessee's effects therefrom; and if such possession be not immediately surrendered, the Port may forthwith enter into and on said Premises and repossess them as of the Port's former estate and expel the Lessee, or those claiming under the Lessee, and remove the effects of any of them, forcibly if necessary, and lock said Premises, without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenants; and that in such event the Lessee expressly waives the service of any notice of intention so to terminate this Lease or to retake the Premises, and waives service of any demand for payment of rent or for possession and of any and every other notice or demand prescribed by any law of the State of Oregon.

Section 4.14 - Remedies on Default: In the event of termination on default, the Port shall be entitled to request immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, any excess of the value of the SSA's obligations to pay rent under this Lease, plus the reasonable cost of



reentry and reletting, including, without limitation, the cost of any cleanup, refurbishing, removal of the SSA's property and fixtures or any other expense occasioned by the SSA's failure to quit the demised Premises upon termination or to leave them in the required condition, any remodeling costs, attorneys' fees, court costs, broker commissions, and advertising costs, plus the unpaid cost of any tenant improvements being amortized over the term of this Lease, plus the amount of the loss of reasonable rental value from the date of default until a new tenant has been, or, with the exercise of reasonable diligence, could have been secured not exceed ninety (90) days.

Section 4.15 - Liens: The SSA shall not suffer or permit any mechanic's lien to be filed against the fee of the demised Premises nor against the SSA's leasehold interest in said Premises by reason of work, labor, services, or materials thereof through or under the SSA, and nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of the Port, express or implied, by inference or otherwise to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the demised Premises or any part thereof, nor as giving the SSA any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's lien against the fee of the demised Premises. If any such mechanic's lien shall at any time be filed against demised Premises, the SSA shall cause the same to be discharged of record within twenty (20) days after the date of filing the same.

Section 4.16 - Holding Over: If the SSA shall hold over after the expiration of the term of this Lease, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, the SSA shall remain bound by all terms, covenants, and agreements hereof, except that the tenancy shall be one from month to month.

Section 4.17 - Utilities: SSA shall promptly pay any charges for sewer, water, gas, electricity, telephone, and all other charges for utilities which may be furnished to the leased premises.

Section 4.18 - Regulations: The Port, for the proper maintenance of said building; the rendering of good service, and the providing of safety, order, and cleanliness, may make and enforce regulations appropriate for such purposes but not in enlargement of or inconsistent with the terms, covenants, and conditions of this Lease.

Section 4.19 - Waiver: Any waivers shall be in writing. The covenants of this Lease are continuing covenants and the waiver by the Lessor of breaches of said covenants shall not be deemed a waiver of subsequent breaches thereof.

Section 4.20 - Modification: This Lease may not be modified except by endorsement in writing attached to this Lease, dated and signed by all the parties hereto, and Port shall not be bound by any oral or written statement of any servant, agent, or employee modifying this Lease.

Section 4.21 - Parties: The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto, and the words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become parties hereto.

Section 4.22 - Subordination: This Lease shall be subject and subordinate to such liens and encumbrances as are now on or as Port may hereafter impose on the land and building, and the Lessee shall upon request of Port, execute and deliver agreements of subordination consistent herewith.

Section 4.23 - Taxes: Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the State, County, City, or any other tax levying body upon any taxable interest by SSA acquired in this Agreement or any taxable possessory right which SSA may have in Premises or the improvements thereon by reason of SSA occupancy thereof as well as all taxes on all taxable property, real or personal, owned by SSA in or about said Premises, provided that SSA may, in good faith, contest the levying of such taxes and in such event may permit the taxes so contested to remain undischarged and unsatisfied during the period of such contest. Upon making such payments, SSA shall give to the Port a copy of the receipts and vouchers showing such payment. Upon any termination of tenancy, all



taxes then levied or then a lien on any of said property or taxable interest therein shall be paid in full without proration by SSA forthwith or as soon as a statement thereof has been issued by tax collector.

Section 4.24 - Insurance: SSA shall maintain comprehensive, general and automobile liability insurance for the protection of SSA directors, officers, servants, and employees, insuring SSA against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to or occasioned by reason of the lease of the Premises with insurance of not less than Five Million and No/100 Dollars (\$5,000,000.00) combined single limit. The policy will cover the legal, contractual, and assumed liability of the SSA pursuant to this Agreement. Such insurance shall not be invalidated by any act or neglect or breach of contract by SSA.

SSA shall maintain in force Worker's Compensation insurance, including coverage for Employer's Liability and Longshore and Harbor Worker's Compensation Act.

SSA shall furnish to the Port a certificate, which shall be consistent with SSA's obligations under this Agreement, and shall furnish copies of the policies, if requested by the Port, evidencing the date, amount, and type of insurance that has been procured pursuant to this Agreement. All policies of insurance will provide for not less than thirty (30) days written notice to the Port and SSA before such policies may be revised, nonrenewed, or cancelled.

Section 4.25 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, P.O. Box 3529, Portland, Oregon 97208, and to the SSA, \_\_\_\_\_.

Date of Service of such notice is date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

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Section 4.26 - Warranty: Both parties warrant that, prior to execution and during the term of this Agreement, neither the Port's project manager for the Premises, the Terminal 2 Administration Building, or the Bond-Finance Improvements, nor any of the members of the Board of Commissioners of the Port, is a member of the Board of Directors or shareholders of, employed by, or otherwise associated with SSA or any entity affiliated with SSA; and that no SSA officer, director, employee, or agent is a member of the Board of Commissioners of the Port.

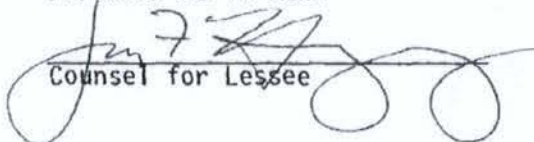
IN WITNESS WHEREOF, the parties hereto have subscribed their names.

STEVEDORING SERVICES OF AMERICA

By 

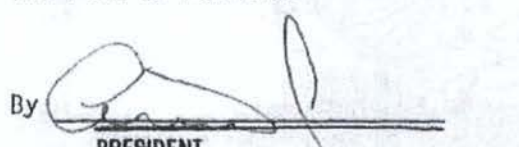
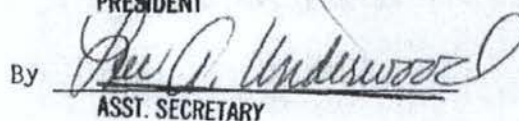
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APPROVED AS TO FORM

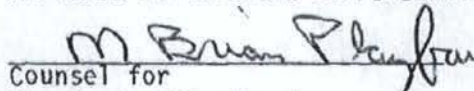
  
Counsel for Lessee

02/09/87  
3706L

THE PORT OF PORTLAND

By   
PRESIDENT  
By   
ASST. SECRETARY

APPROVED AS TO LEGAL SUFFICIENCY

  
Counsel for  
The Port of Portland

Approved by Commission

Date 3-11-87



MANAGEMENT AGREEMENT FOR A PORTION OF THE  
PORT OF PORTLAND'S BOND-FINANCED  
MARINE FACILITY

This MANAGEMENT AGREEMENT, made and entered into this 22<sup>nd</sup> day of October, 1987, by and between THE PORT OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter referred as "Port," and STEVEDORING SERVICES OF AMERICA, INC., 5051 North Lagoon Avenue, Portland, Oregon 97217, a corporation duly organized under the laws of the State of California hereinafter referred to as "SSA."

W I T N E S S E T H:

WHEREAS, the Port and SSA entered into a management agreement for the Port's existing multiple-user general cargo facilities at Terminal 2 dated July 10, 1985, hereinafter referred to as "Original Agreement;" and

WHEREAS, until final completion of certain bond financed improvements at Terminal 2 by the Port, SSA desires to provide professional marine terminal management services for that portion of the facility completed which consists of approximately 564,600 square feet and improved with certain facilities and which is more completely described in Exhibit A attached hereto, and made a part hereof, hereinafter referred to as "Interim Improvements;" and

WHEREAS, the parties shall agree in the future on the expansion of the Interim Improvements as terminal construction progresses and after the Port, in its sole discretion, determines that the improvements are ready for use by SSA; and

WHEREAS, SSA is willing to use its best efforts in furthering the efficient utilization of the Interim Improvements in worldwide commerce, market the Interim Improvements capacities, and provide professional marine terminal management services for the Interim Improvements; and

WHEREAS, the parties set forth their respective responsibilities for the management of the existing facilities at Terminal 2 in the Original Agreement, the terms and provisions of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

#### ARTICLE I - BASIC TERMS

Unless expressly modified by Article II of this Agreement, all terms and conditions set forth in the Original Agreement shall apply to this Management Agreement for the Interim Improvements and are hereby incorporated herein by reference.

## ARTICLE II - TERM

Section 2.1 - Term: The term of this Agreement shall commence upon execution and shall continue until the Bond-Financed Improvements are completed. The Port shall notify SSA in writing 30 days prior to the date upon which the Bond-Financed Improvements are complete and ready for use.

Section 2.2 - Sharing of Gross Receipts: SSA and the Port agree that the Interim Improvements, financed with general obligation bond proceeds, will not have been operated for a sufficient period to establish, with reasonable certainty, the amount of expected annual gross revenues and expenses. The sharing of Gross Receipts as set forth in Section 3.3 of the Terminal 2 Management Agreement shall apply to the sharing of Gross Receipts attributable to the Interim Improvements.

Section 2.3 - Minimum Guarantee: Other than as set forth in Section 3.5 of the Terminal 2 Management Agreement, there shall be no minimum amount of Gross Receipts attributable to the Interim Improvements guaranteed to the Port by SSA during the term of this Management Agreement.

Section 2.4 - Port's Right to Cancel: The Port retains the right to cancel, for whatever reason, this Management Agreement for the Interim Improvements at any time without penalty upon 30 days' written notice. Once the Bond-Financed Improvements are complete and ready



for use as described in the Original Agreement, this Agreement shall automatically terminate.

Section 2.5 - Taxability of Port Bonds: The Management Agreement for the Interim Improvements will be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Interim Improvements. It is an express condition precedent to the execution of this Agreement that the Port obtain from competent legal counsel of its choosing an opinion that interest earned by holders of the Port General Obligation Bonds will not be includable in such holder's Gross Income under Internal Revenue Code Section 103, as amended. The parties shall negotiate the final terms of this Agreement with such terms as are necessary to obtain such legal opinion, but only if such terms are also mutually agreeable to both the Port and SSA. In the event that the parties cannot agree upon the terms necessary to obtain the legal opinion, Port may cancel this Agreement upon written notice to SSA.

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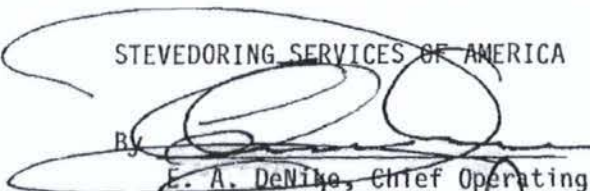
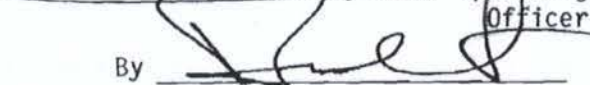
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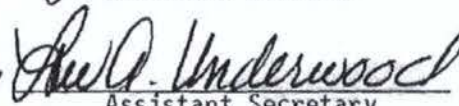
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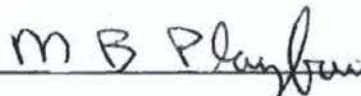
The Port agrees to expeditiously seek an opinion from its Bond Counsel to clarify the allowable terms of the Management Agreement for the Interim Improvements.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

STEVEDORING SERVICES OF AMERICA  
By   
E. A. DeNino, Chief Operating Officer  
By   
Bruce Whisnant, Senior Vice President

THE PORT OF PORTLAND  
By   
Executive Director  
By   
Assistant Secretary

APPROVED AS TO LEGAL SUFFICIENCY

  
M B Playfair

10/05/87  
3786L:12E073

CA 06-0844

**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY**

Permit Number: 11-406

Date Issued: July 24, 2006

**PERMITTEE:**

Washington County Sheriff's Office  
215 SW Adams Avenue, MS #32  
Hillsboro Or 97123-3874  
Contact: John L. Gillman  
Phone: 503-846-2530  
Fax: 503-846-2604

**PERMITTOR:**

The Port of Portland  
121 NW Everett St.  
Portland, OR 97209  
Contact: Lorali Sinnen  
Phone: (503) 944-7538  
Fax: (503) 548-5900

The Port of Portland (hereinafter the "Port") hereby grants to Washington County Sheriff's Office (hereinafter "Permittee") the nonexclusive right to enter upon and use the below-described Premises only in accordance with the terms and conditions set forth below:

**1. PREMISES**

The Premises shall consist of an approximately eight and one quarter (8.25) acre area within the terminal yard at Terminal 2 located at 3556 NW Front Avenue in Portland, Multnomah County, Oregon ("Permittee's Property") and shown on **Exhibit "A,"** attached hereto. The Port reserves the right to replace the above described Premises with a substitute area if the Premises are needed for other terminal use.

**2. PERMITTED USE**

This Permit and Right-of-Entry (Permit") authorizes Permittee to enter upon the Premises, upon request and as available pursuant to Section 4 below, for the sole purpose of conducting police drivers' obstacle course training at Permittee's cost. Permittee shall use the Premises solely for the purposes set forth in this Permit. Permittee shall not interfere with the operations of any tenants on the Premises, or the use of property adjacent to the Premises or other portions of Terminal 2 by other users, tenants, or owners thereof. Permittee may access the Premises through Terminal 2 Main Gate 4 as shown on the attached **Exhibit A**. No excavation of any type shall be allowed. No washing, fueling, repair, maintenance, or modifications of vehicles is permitted on the Premises. If Permittee discovers any contamination on the Premises, Permittee shall immediately notify the Port and shall stop all activities authorized hereunder and take all appropriate actions to prevent the contamination from migrating or being spread on or off the Premises.



### **3. TERM OF PERMIT**

The term of this Permit shall commence on August 1, 2006 ("Commencement Date") shall terminate on the earlier of completion of the training, or September 30, 2006, unless otherwise terminated pursuant to the terms of this Permit.

### **4. SPECIAL REQUIREMENTS**

Permittee shall contact Dan Pippenger of the Port's Marine Security at 503-240-2232 to make arrangement for the security staff to be hired for the facility, with a minimum of five (5) working days advance notice of each use of the facility. Permittee is prohibited from providing and ordering the security services themselves.

Permittee shall make reasonable attempt to keep noise and disruptions to the other tenants, neighbors and adjoining property owners to a minimum. Permittee shall perform training only during daylight hours.

### **5. COMPENSATION TO BE PAID BY PERMITTEE**

No permit fee is required under the terms of this Permit, provided however, Permittee will be billed for the additional security costs incurred by the Port as the result of Permittee's use during Permittee's use of the Premises. Permittee must pay for any security services ordered by the Port, regardless of whether Permittee actually uses the Premises under this Permit.

### **6. TERMINATION**

Notwithstanding any provision contained herein, the Port or its authorized representative may terminate this Permit, at any time, verbally or in writing, for Permittee's Default, or with thirty (30) days notice if the Premises is need for marine activity at Terminal 2. As used herein, the term "Default" shall mean the violation of any provision of this Permit by Permittee. Upon notice of termination, Permittee shall immediately leave the Premises. Unless waived by the Port, the Permittee shall restore the Premises as required in Section 16. Permittee's obligations and liability to the Port shall survive termination. In the event of Permittee's Default, the Port shall have all remedies available at law or in equity.

### **7. INDEMNITY AND REIMBURSEMENT**

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, and to the fullest extent allowed under Oregon law, Permittee agrees to defend (using legal counsel acceptable to the Port), indemnify, hold harmless, the Port from and against, and reimburse the Port for , any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, penalties, and/or Environmental Costs (as defined below) (collectively "Costs") which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) any act, omission, or negligence of Permittee; (ii) any use, occupation, management, or control of the Premises by Permittee; (iii) any breach, violation, or nonperformance of any of Permittee's obligations under this Permit; or (iv) any damage



caused by Permittee on or to the Premises or any adjoining property. For purposes of this Section, "Permittee" shall be deemed to include Permittee and all of Permittee's respective partners, officers, directors, agents, employees, invitees, and/or contractors.

#### **8. NO BENEFIT TO THIRD PARTIES**

The Port and Permittee are the only parties to this Permit and, as such, are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

#### **9. INSURANCE**

On or before the Commencement Date and thereafter for the duration of this Permit, Permittee shall provide the Port with current certificates of insurance as evidence of all insurance policies required under this Section. Permittee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Permittee and the Port insuring Permittee against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to this Permit or occasioned by reason of operations of the Permittee on or from the Premises. The insurance required by this Section shall include broad form contractual liability coverage and shall have limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Such insurance shall name the Port, its commissioners, directors, officers, and employees as additional insureds. The coverage provided by this policy shall be primary and any other insurance carried by Port is excess. Permittee shall also maintain in force Workers' Compensation insurance, including coverage for Employer's Liability. If Permittee is a qualified self-insured employer, a copy of Permittee's Certificate of Compliance and a certificate of insurance evidencing excess workers' compensation and employer's liability insurance shall be forwarded to Port upon execution of this Permit. Insurance allowed to lapse during the term of this Permit without Port consent shall be deemed a Default under this Permit.

#### **10. ASSIGNMENT OF INTEREST OR RIGHTS**

Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer, or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

#### **11. ATTORNEY FEES**

If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover, in addition to Costs, such sum as the court may adjudge reasonable as attorney fees or, in the event of appeal, as allowed by the appellate court.

#### **12. WARRANTIES/GUARANTEES**

The Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that the Port will not

be responsible for, and Permittee hereby releases the Port from any liability for, any loss, damage, or costs which may be incurred by Permittee by reason of any such physical condition. Permittee assumes all risks associated with the Premises and Permittee's entry thereon.

### **13. COMPLIANCE WITH LAW**

Permittee shall comply with all applicable state, federal, and local laws, including, but not limited to Environmental Laws, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, workers' compensation, and minimum and prevailing wage requirements.

### **14. NOTICES**

All notices required under this Permit shall be deemed properly served if personally served or sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the parties at the addresses set forth below:

Washington County Sheriff's Office  
215 SW Adams Ave. MS #32  
Hillsboro OR 97123-3874  
Attn: John L. Gillman

The Port of Portland  
121 NW Everett St.  
Portland, OR 97209  
Attn: Lorali Sinnen

If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

### **15. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

#### **15.1 Definitions**

For the purposes of this Permit, the following definitions shall apply:

##### **15.1.1 Environmental Law**

"Environmental Law" shall be interpreted in the broadest sense to include any and all federal, State of Oregon and local laws, regulations, rules, permit terms, including but not limited to any storm water pollution control requirements, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.

##### **15.1.2 Hazardous Substance**

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials, or any other similar term in or under any Environmental Law. Hazardous



Substance shall also include, but not be limited to, fuels, petroleum, and petroleum-derived products.

#### **15.1.3 Environmental Cost**

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, Special Audit costs, fines, fees, or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases; and (v) violations of any environmental provisions of this Permit. Costs and damages, as used in this Section, shall include, but not be limited to: (a) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring, and maintenance; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as Costs, incurred at, before, or after trial, appeal, or administrative proceedings; (c) lost revenue and natural resource damage; and (d) diminution of value, loss, or restriction on use of property.

#### **15.1.4 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under Environmental Law.

### **15.2 General Environmental Obligations of Permittee**

Permittee shall manage and conduct all of its activities on or relating to the Premises: (i) in compliance with Environmental Law and the environmental provisions of this Permit; (ii) in cooperation with the Port in the Port's efforts to comply with Environmental Law; and (iii) in adherence with best management practices applicable to Permittee's use of the Premises. Permittee shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of Environmental Law by any party on or relating to the Premises.

### **15.3 Use of Hazardous Substances**

Permittee shall not be permitted to use, handle or store Hazardous Substances on the Premises. Permittee is allowed to conduct emergency vehicle operations on the Premises, which will include the use of motor vehicle fuel and other petroleum products in the vehicles. Permittee is specifically prohibited from performing any maintenance or fueling the vehicles on the Premises.

### **15.4 Permittee's Liability**

#### **15.4.1 Release of Hazardous Substance**

Except as provided in Section 15.4.3, Permittee shall be responsible for any Hazardous Substance Release on the Premises, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Permittee's occupancy or use of the Premises occurring during the Permit Term or occurring or continuing after the Permit Term.

#### **15.4.2 Permittee's Liability for Environmental Costs**

Except as provided in Section 15.4.3, and subject to Section 7, Permittee shall be responsible for all Environmental Costs arising under this Permit.

#### **15.4.3 Limitation of Permittee's Liability**

Notwithstanding anything to the contrary provided in this Permit, Permittee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Costs arising therefrom, that: (i) existed on the Premises prior to the Effective Date of this Permit (except if caused by Permittee or Permittee's agents, employees, or contractors); or (ii) are caused by the Port or the agents, employees, or contractors of the Port after the Effective Date of this Permit. If Permittee exacerbates existing or Port-caused contamination, Permittee shall be responsible for any increase in Environmental Costs arising from such exacerbation, but not for Environmental Costs arising from such pre-existing or Port-caused contamination.

#### **15.4.4 Pre-existing Contamination Revealed by Permitted Activities**

In the event that Permittee's activities on the Premises reveal a pre-existing contamination of the Premises, Permittee releases the Port and waives any claim against the Port for damages or costs caused by the delay arising from the Port's efforts to remediate such pre-existing contamination.

### **15.5 Environmental Remediation**

#### **15.5.1 Immediate Response**

In the event of a violation of Environmental Law, a violation of an environmental provision of this Permit, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Permittee is responsible under this Permit, Permittee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain, and stop the Hazardous Substance Release and remove the Hazardous Substance.

#### **15.5.2 Remediation**

Permittee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any Environmental Law or environmental provision of this Permit is corrected. Permittee shall remediate, at Permittee's sole expense, all Hazardous Substances for which Permittee is responsible under this Permit or under any Environmental Law and shall restore the Premises or other affected property or water to its pre-contamination condition.

#### **15.5.3 Report to the Port**

Within thirty (30) days following completion of any investigatory, containment, remediation, and/or removal action required by this Permit, Permittee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.



#### **15.5.4 Port's Approval Rights**

Except in the case of an emergency or an agency order requiring immediate action, Permittee shall give the Port advance notice before beginning any investigatory, remediation, or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation, and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Permit or by Environmental Law, whether on the Premises or on any affected property or water. The Port will have the right to require Permittee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation, and removal activities and/or require Permittee to seek a statement from DEQ of "No Further Action."

#### **15.6 Notice**

Permittee shall promptly notify the Port upon becoming aware of: (i) a violation or alleged violation of any Environmental Law related to the Premises or to Permittee's occupation or use of the Premises or any environmental provision of this Permit; and (ii) any Hazardous Substance Release on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any business day, Permittee shall notify the Port by calling the Port's Marine emergency telephone number. That number is (503) 240-2230.

#### **15.7 Port's Right to Perform on Behalf of Permittee**

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving Permittee seven (7) days' written notice, to perform Permittee's obligations arising under this Permit and charge Permittee the resulting Environmental Cost. The Port may not commence performance on behalf of Permittee under this Section if, within the seven (7)-day notice period, Permittee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

### **16. DUTIES UPON TERMINATION**

Upon termination of this Permit, Permittee shall restore the Premises to its condition at the Commencement Date of this Permit, unless otherwise directed by the Port. In addition, Permittee shall: (i) remove any and all of Permittee's property, including, but not limited to, equipment, materials, supplies, and debris from the Premises; (ii) repair any damage to the Premises caused by Permittee's use thereof; and (iii) return all keys, if applicable, to the Port. Permittee's obligations and liability to the Port under this Permit shall survive termination of this Permit.

### **17. ABANDONMENT**

Any items of Permittee's property which remain on the Premises after the expiration or termination of this Permit may, at the Port's option, be deemed abandoned. The Port shall have the option of removing and disposing of any or all such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then-current rate, from Permittee upon demand.



**18. LIMITATION ON PORT LIABILITY**

The Port shall have no liability to Permittee for, and Permittee hereby releases the Port from, any loss, damage or injury suffered by Permittee on account of theft or any act or omission of any third party, including other tenants or users of Port property. In addition, in all events whether relating to the foregoing sentence or otherwise, the Port shall only be liable to Permittee for the Port's own willful misconduct or gross negligence, and then only to the extent of actual and not consequential damages. Permittee hereby waives any other rights or remedies to which it might otherwise be entitled pursuant to applicable statutory or common law.

**19. PARTIAL INVALIDITY**

If any provision of this Permit is held to be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Permit shall be valid and enforceable to the fullest extent permitted by law.

**20. WARRANTY OF AUTHORITY**

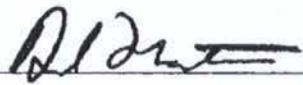
The individuals executing this Permit warrant that they have full authority to execute this Permit on behalf of the entity for whom they are acting herein.

**21. ENTIRE AGREEMENT**

This Permit represents the entire agreement between the parties and supersedes all prior agreements, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Both parties agree to be bound by the terms and conditions of this Permit.

**WASHINGTON COUNTY**

By: 

Dave Maertens

Type or print name

Sr. Deputy County Admin.

Title

AUG 02 2006

Date

**THE PORT OF PORTLAND**

By: 

Executive Director

Title

August 11, 2006

Date

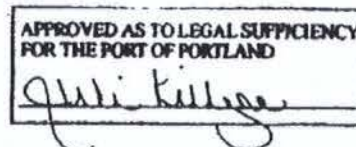
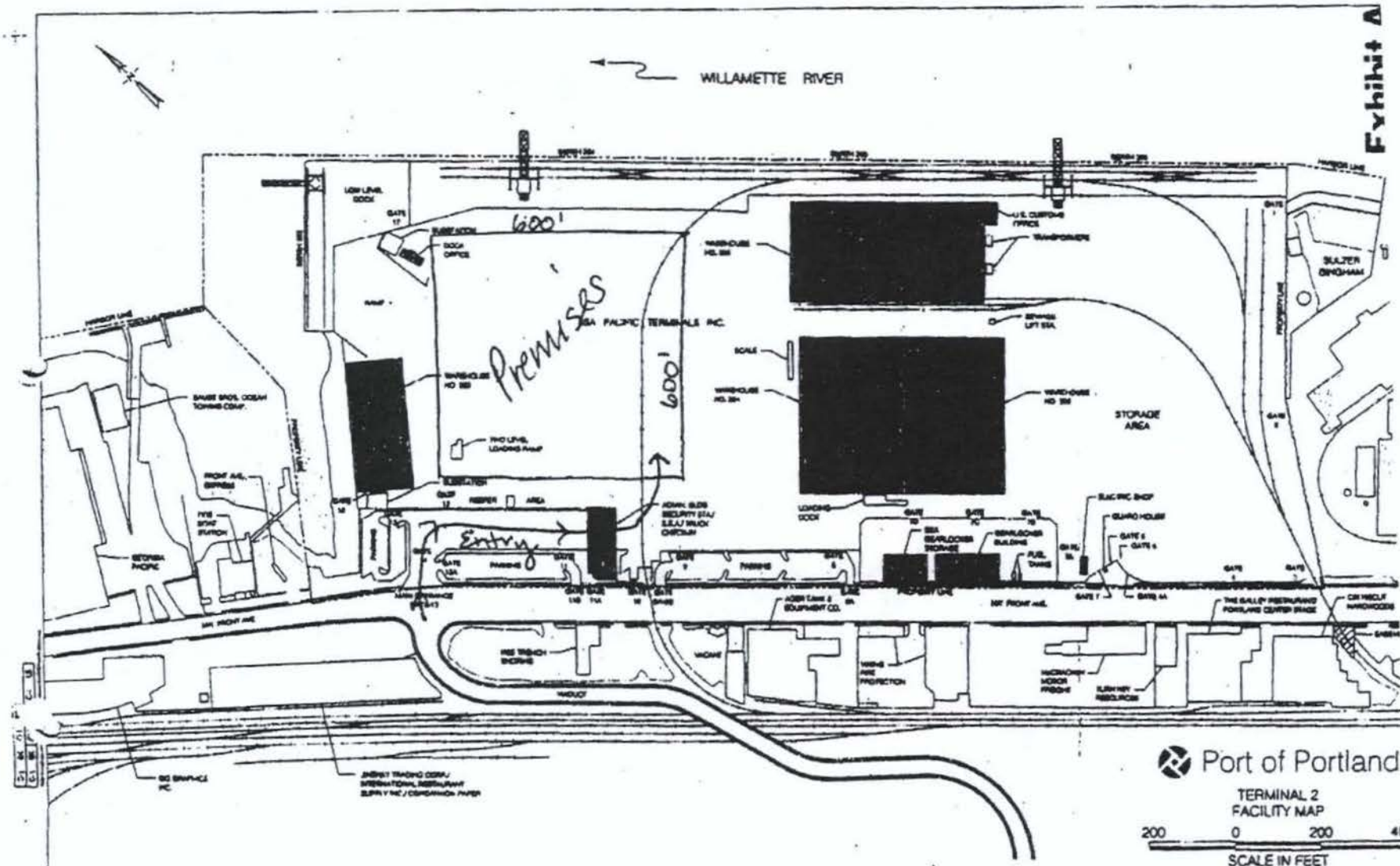


Exhibit A



Port of Portland  
Terminal 2  
Facility Map  
200 0 200 400  
Scale in Feet

DATE: JAN 2004

T2 2004-300

POPT2101661  
POPT2100107



**PORT OF PORTLAND  
PERMIT AND RIGHT-OF-ENTRY**

Permit Number: 11-388

Date Issued: November 15, 2005

**PERMITTEE:**

Washington County Sheriff's Office  
215 SW Adams Avenue, MS #32  
Hillsboro Or 97123-3874  
Contact: John L. Gillman  
Phone: 503-846-2530  
Fax: 503-846-2604

**PERMITTOR:**

The Port of Portland  
121 NW Everett St.  
Portland, OR 97209  
Contact: Loralie Sinnen  
Phone: (503) 944-7538  
Fax: (503) 548-5900

The Port of Portland (hereinafter the "Port") hereby grants to Washington County Sheriff's Office (hereinafter "Permittee") the nonexclusive right to enter upon and use the below-described Premises only in accordance with the terms and conditions set forth below:

**1. PREMISES**

The Premises shall consist of an approximately eight and one quarter (8.25) acre area within the terminal yard at Terminal 2 located at 3556 NW Front Avenue in Portland, Multnomah County, Oregon ("Permittee's Property") and shown on **Exhibit "A,"** attached hereto. The Port reserves the right to replace the above described Premises with a substitute area if the Premises are needed for other terminal use.

**2. PERMITTED USE**

This Permit and Right-of-Entry (Permit) authorizes Permittee to enter upon the Premises, upon request and as available pursuant to Section 4 below, for the sole purpose of conducting police drivers' obstacle course training at Permittee's cost. Permittee shall use the Premises solely for the purposes set forth in this Permit. Permittee shall not interfere with the operations of any tenants on the Premises, or the use of property adjacent to the Premises or other portions of Terminal 2 by other users, tenants, or owners thereof. Permittee may access the Premises through Terminal 2 Main Gate 4 as shown on the attached **Exhibit A**. No excavation of any type shall be allowed. No washing, fueling, repair, maintenance, or modifications of vehicles is permitted on the Premises. If Permittee discovers any contamination on the Premises, Permittee shall immediately notify the Port and shall stop all activities authorized hereunder and take all appropriate actions to prevent the contamination from migrating or being spread on or off the Premises.



### **3. TERM OF PERMIT**

The term of this Permit shall commence on December 1, 2005 ("Commencement Date") shall terminate on the earlier of completion of the training, or June 30, 2006, unless otherwise terminated pursuant to the terms of this Permit.

### **4. SPECIAL REQUIREMENTS**

Permittee shall contact Gregg Bieber of the Port's Marine Security at 503-240-2003 to make arrangement for the security staff to be hired for the facility, with a minimum of five (5) working days advance notice of each use of the facility. Permittee is prohibited from providing and ordering the security services themselves.

Permittee shall make reasonable attempt to keep noise and disruptions to the other tenants, neighbors and adjoining property owners to a minimum. Permittee shall perform training only during daylight hours.

### **5. COMPENSATION TO BE PAID BY PERMITTEE**

No permit fee is required under the terms of this Permit, provided however, Permittee will be billed for the additional security costs incurred by the Port as the result of Permittee's use during Permittee's use of the Premises. Permittee must pay for any security services ordered by the Port, regardless of whether Permittee actually uses the Premises under this Permit.

### **6. TERMINATION**

Notwithstanding any provision contained herein, the Port or its authorized representative may terminate this Permit, at any time, verbally or in writing, for Permittee's Default, or with thirty (30) days notice if the Premises is need for marine activity at Terminal 2. As used herein, the term "Default" shall mean the violation of any provision of this Permit by Permittee. Upon notice of termination, Permittee shall immediately leave the Premises. Unless waived by the Port, the Permittee shall restore the Premises as required in Section 16. Permittee's obligations and liability to the Port shall survive termination. In the event of Permittee's Default, the Port shall have all remedies available at law or in equity.

### **7. INDEMNITY AND REIMBURSEMENT**

Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, and to the fullest extent allowed under Oregon law, Permittee agrees to defend (using legal counsel acceptable to the Port), indemnify, hold harmless, the Port from and against, and reimburse the Port for, any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, penalties, and/or Environmental Costs (as defined below) (collectively "Costs") which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) any act, omission, or negligence of Permittee; (ii) any use, occupation, management, or control of the Premises by Permittee; (iii) any breach, violation, or nonperformance of any of Permittee's obligations under this Permit; or (iv) any damage



caused by Permittee on or to the Premises or any adjoining property. For purposes of this Section, "Permittee" shall be deemed to include Permittee and all of Permittee's respective partners, officers, directors, agents, employees, invitees, and/or contractors.

#### **8. NO BENEFIT TO THIRD PARTIES**

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Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer, or encumber any of Permittee's rights granted by this instrument. Any attempted assignment or transfer shall be void.

#### **11. ATTORNEY FEES**

If suit or action is instituted in connection with any controversy arising out of this Permit, the prevailing party shall be entitled to recover, in addition to Costs, such sum as the court may adjudge reasonable as attorney fees or, in the event of appeal, as allowed by the appellate court.

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### **13. COMPLIANCE WITH LAW**

Permittee shall comply with all applicable state, federal, and local laws, including, but not limited to Environmental Laws, City of Portland zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, workers' compensation, and minimum and prevailing wage requirements.

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If mailed, the notice shall be deemed received five (5) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery.

### **15. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

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##### **15.1.2 Hazardous Substance**

"Hazardous Substance" includes any and all substances defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials, or any other similar term in or under any Environmental Law. Hazardous



Substance shall also include, but not be limited to, fuels, petroleum, and petroleum-derived products.

#### **15.1.3 Environmental Cost**

"Environmental Cost" includes, but is not limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, Special Audit costs, fines, fees, or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases; and (v) violations of any environmental provisions of this Permit. Costs and damages, as used in this Section, shall include, but not be limited to: (a) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring, and maintenance; (b) fees of attorneys, engineers, consultants, and experts, whether or not taxable as Costs, incurred at, before, or after trial, appeal, or administrative proceedings; (c) lost revenue and natural resource damage; and (d) diminution of value, loss, or restriction on use of property.

#### **15.1.4 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under Environmental Law.

#### **15.2 General Environmental Obligations of Permittee**

Permittee shall manage and conduct all of its activities on or relating to the Premises: (i) in compliance with Environmental Law and the environmental provisions of this Permit; (ii) in cooperation with the Port in the Port's efforts to comply with Environmental Law; and (iii) in adherence with best management practices applicable to Permittee's use of the Premises. Permittee shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of Environmental Law by any party on or relating to the Premises.

#### **15.3 Use of Hazardous Substances**

Permittee shall not be permitted to use, handle or store Hazardous Substances on the Premises. Permittee is allowed to conduct emergency vehicle operations on the Premises, which will include the use of motor vehicle fuel and other petroleum products in the vehicles. Permittee is specifically prohibited from performing any maintenance or fueling the vehicles on the Premises.

#### **15.4 Permittee's Liability**

##### **15.4.1 Release of Hazardous Substance**

Except as provided in Section 15.4.3, Permittee shall be responsible for any Hazardous Substance Release on the Premises, on other properties, in the air, or in adjacent or nearby waterways (including groundwater) which results from or occurs in connection with Permittee's occupancy or use of the Premises occurring during the Permit Term or occurring or continuing after the Permit Term.

#### **15.4.2 Permittee's Liability for Environmental Costs**

Except as provided in Section 15.4.3, and subject to Section 7, Permittee shall be responsible for all Environmental Costs arising under this Permit.

#### **15.4.3 Limitation of Permittee's Liability**

Notwithstanding anything to the contrary provided in this Permit, Permittee shall have no responsibility for Hazardous Substances or Hazardous Substance Releases, or Environmental Costs arising therefrom, that: (i) existed on the Premises prior to the Effective Date of this Permit (except if caused by Permittee or Permittee's agents, employees, or contractors); or (ii) are caused by the Port or the agents, employees, or contractors of the Port after the Effective Date of this Permit. If Permittee exacerbates existing or Port-caused contamination, Permittee shall be responsible for any increase in Environmental Costs arising from such exacerbation, but not for Environmental Costs arising from such pre-existing or Port-caused contamination.

#### **15.4.4 Pre-existing Contamination Revealed by Permitted Activities**

In the event that Permittee's activities on the Premises reveal a pre-existing contamination of the Premises, Permittee releases the Port and waives any claim against the Port for damages or costs caused by the delay arising from the Port's efforts to remediate such pre-existing contamination.

### **15.5 Environmental Remediation**

#### **15.5.1 Immediate Response**

In the event of a violation of Environmental Law, a violation of an environmental provision of this Permit, a Hazardous Substance Release, or the threat of or reasonable suspicion of the same for which Permittee is responsible under this Permit, Permittee shall immediately undertake and diligently pursue all acts necessary or appropriate to correct the violation or investigate, contain, and stop the Hazardous Substance Release and remove the Hazardous Substance.

#### **15.5.2 Remediation**

Permittee shall promptly undertake all actions necessary or appropriate to ensure that any Hazardous Substance Release is remediated and that any violation of any Environmental Law or environmental provision of this Permit is corrected. Permittee shall remediate, at Permittee's sole expense, all Hazardous Substances for which Permittee is responsible under this Permit or under any Environmental Law and shall restore the Premises or other affected property or water to its pre-contamination condition.

#### **15.5.3 Report to the Port**

Within thirty (30) days following completion of any investigatory, containment, remediation, and/or removal action required by this Permit, Permittee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof.



#### **15.5.4 Port's Approval Rights**

Except in the case of an emergency or an agency order requiring immediate action, Permittee shall give the Port advance notice before beginning any investigatory, remediation, or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation, and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Permit or by Environmental Law, whether on the Premises or on any affected property or water. The Port will have the right to require Permittee to request oversight from the Oregon Department of Environmental Quality ("DEQ") of any investigatory, containment, remediation, and removal activities and/or require Permittee to seek a statement from DEQ of "No Further Action."

#### **15.6 Notice**

Permittee shall promptly notify the Port upon becoming aware of: (i) a violation or alleged violation of any Environmental Law related to the Premises or to Permittee's occupation or use of the Premises or any environmental provision of this Permit; and (ii) any Hazardous Substance Release on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same. If notice must be given on the weekend or after 5:00 p.m. on any business day, Permittee shall notify the Port by calling the Port's Marine emergency telephone number. That number is (503) 240-2230.

#### **15.7 Port's Right to Perform on Behalf of Permittee**

Except in the event of an emergency or an agency order requiring immediate action, the Port shall have the right, upon giving Permittee seven (7) days' written notice, to perform Permittee's obligations arising under this Permit and charge Permittee the resulting Environmental Cost. The Port may not commence performance on behalf of Permittee under this Section if, within the seven (7)-day notice period, Permittee promptly begins and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

### **16. DUTIES UPON TERMINATION**

Upon termination of this Permit, Permittee shall restore the Premises to its condition at the Commencement Date of this Permit, unless otherwise directed by the Port. In addition, Permittee shall: (i) remove any and all of Permittee's property, including, but not limited to, equipment, materials, supplies, and debris from the Premises; (ii) repair any damage to the Premises caused by Permittee's use thereof; and (iii) return all keys, if applicable, to the Port. Permittee's obligations and liability to the Port under this Permit shall survive termination of this Permit.

### **17. ABANDONMENT**

Any items of Permittee's property which remain on the Premises after the expiration or termination of this Permit may, at the Port's option, be deemed abandoned. The Port shall have the option of removing and disposing of any or all such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then-current rate, from Permittee upon demand.



**18. LIMITATION ON PORT LIABILITY**

The Port shall have no liability to Permittee for, and Permittee hereby releases the Port from, any loss, damage or injury suffered by Permittee on account of theft or any act or omission of any third party, including other tenants or users of Port property. In addition, in all events whether relating to the foregoing sentence or otherwise, the Port shall only be liable to Permittee for the Port's own willful misconduct or gross negligence, and then only to the extent of actual and not consequential damages. Permittee hereby waives any other rights or remedies to which it might otherwise be entitled pursuant to applicable statutory or common law.

**19. PARTIAL INVALIDITY**

If any provision of this Permit is held to be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Permit shall be valid and enforceable to the fullest extent permitted by law.

**20. WARRANTY OF AUTHORITY**

The individuals executing this Permit warrant that they have full authority to execute this Permit on behalf of the entity for whom they are acting herein.

**21. ENTIRE AGREEMENT**

This Permit represents the entire agreement between the parties and supersedes all prior agreements, written or oral. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Both parties agree to be bound by the terms and conditions of this Permit.

WASHINGTON COUNTY

By: 

Dave Maertens

Type or print name

Sr. Deputy County Admin.

Title

NOV 29 2005

Date

THE PORT OF PORTLAND

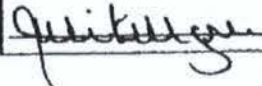
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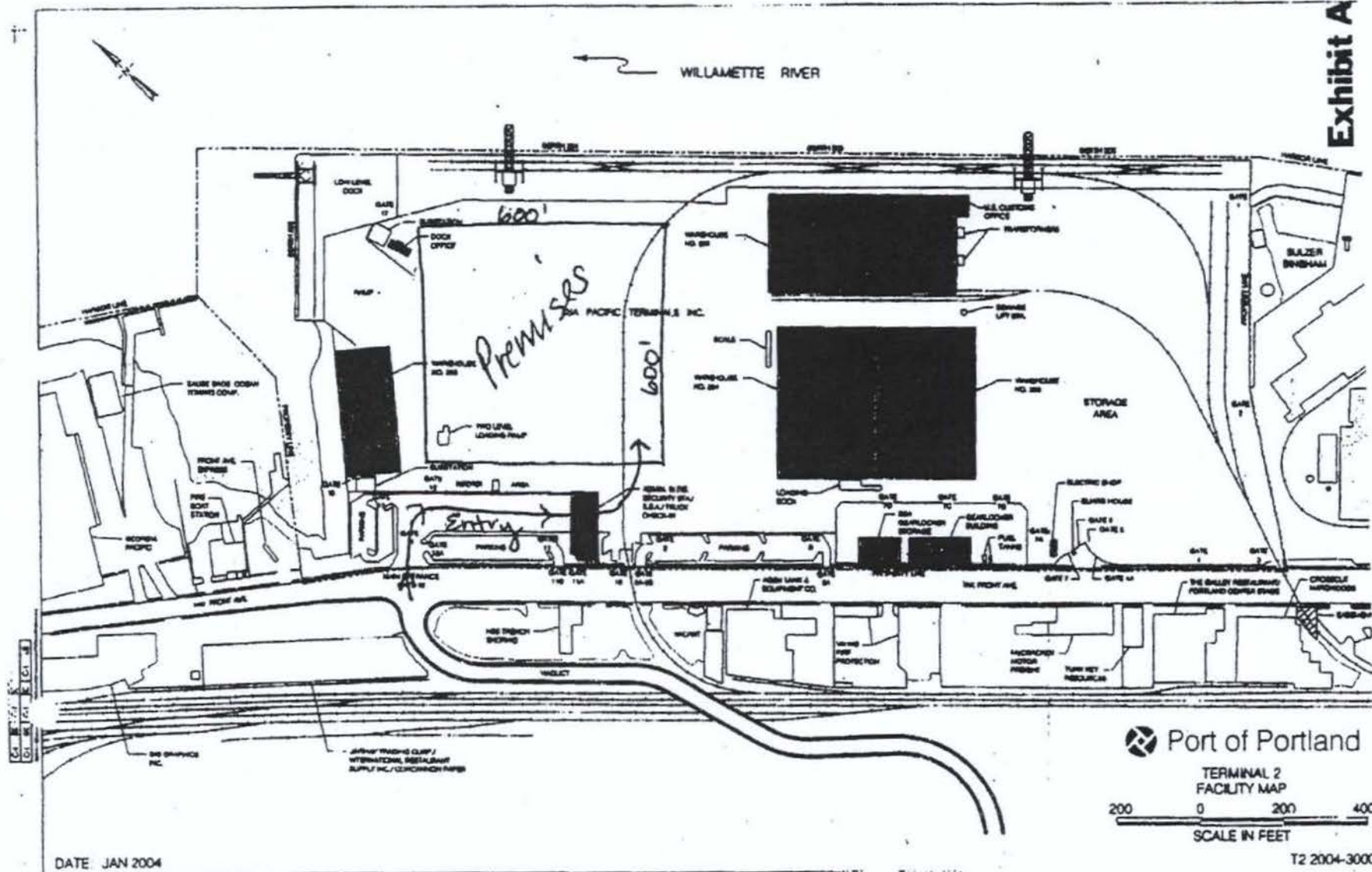
CFO

Title

8 Dec 2005

Date

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND  




BONDED FINANCED IMPROVEMENTS AT TERMINAL 2 LEASE

BETWEEN

THE PORT OF PORTLAND

AND

PUGET SOUND TUG & BARGE COMPANY dba HAWAIIAN MARINE LINES



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LEASE AGREEMENT FOR THE  
PORT OF PORTLAND'S BONDED FINANCED  
IMPROVEMENTS AT TERMINAL 2

This LEASE, made and entered into this 24<sup>th</sup> day of September, 1988,  
by and between THE PORT OF PORTLAND, a municipal corporation of the State of  
Oregon, hereinafter referred as "Port", and PUGET SOUND TUG & BARGE COMPANY,  
dba HAWAIIAN MARINE LINES, a corporation duly organized under the laws of the  
State of Washington, hereinafter referred to as "HML".

W I T N E S S E I H

WHEREAS, the Port and HML entered into an operating agreement for a  
portion of the Port's general cargo facilities at Terminal 2 dated February 4,  
1986 and amended June 27, 1986; and

WHEREAS, HML desires to lease a portion of the Terminal 2 facility that  
consists of approximately 1,850 square feet and improved with certain  
facilities that are more completely described in the drawing titled, "T-2  
Administration Building, Second Floor, dated October, 1986" (Drawing No. T-2  
86-502 8/77), attached hereto as Exhibit "A", and made a part of hereof,  
hereinafter referred to as "Premises"; and

WHEREAS, the Port and HML desire to enter into a lease agreement for the Premises; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

#### ARTICLE I. - PREMISES

Section 1.1 - Description: The Port shall lease the Premises to HML on the terms and conditions stated below.

Section 1.2 - Use of Premises: The Lessee may use the Premises only for the purpose of office space.

#### ARTICLE II. - TERM

Section 2.1 - Initial Term: The term of this Lease shall commence on Septmeber 15, 1988 and continue through June 30, 1991.

Section 2.2 - Taxability of Port Bonds: This Lease Agreement shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Premises. It is a material condition of this Lease that the Port's bond counsel, of the Port's choosing, be able to issue an opinion that interest earned by holders of the Port Terminal 2 Reconstruction General Obligation Bonds will not be caused by this Lease to be includable in such holder's Gross Income under Internal Revenue Code Section 103, as amended. The parties

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shall negotiate any modifications of this Lease to insure that its terms will permit the Port to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both the Port and HML. In the event that the parties cannot agree upon the terms necessary to obtain legal opinion, the Port may cancel this Agreement upon written notice to HML.

### ARTICLE III. - RENTAL

#### Section 3.1:

A. Basic Rent: HML shall pay the Port rent of based on a rate of \$9 per square foot per annum, equal to \$1,387.50 per month for the total square footage leased of approximately 1,850 square feet, subject to final survey referenced herein, beginning at the commencement of the term of this Lease. Rent shall be payable on the first day of each month in advance, except that rent for the first month has been paid upon the execution of this Lease and the Port acknowledges receipt of this sum. In addition to the first month's rent, Lessee has paid \$1,387.50 as and for a deposit (hereinafter "Lease Deposit"). The Port by its signature to this Lease acknowledges receipt of said rent and Lease Deposit. The Lease Deposit shall be held by the Port, free of any claim of Lessee for return of principal or interest thereon, except that the Lease Deposit shall be applied to the last month's rent or may be applied to any default of Lessee under this Lease. In the event the Lease Deposit is used by the Port to cure a default in whole or in part, the Port shall provide Lessee with notice and Lessee shall immediately restore the Lease Deposit to its original amount.

B. Base Operating Costs: In addition to the basic rent contained in Subparagraph "A" of this Section, HML shall pay the Port \$3 per square foot per annum on the total square footage leased of 1,850 square feet, for the total base operating cost of \$5,550, payable in the sum of \$462.50 per month beginning at the commencement of the term of this Lease. The base operating cost shall be subject to adjustment in accordance with Section 3.2 of this Lease.

Section 3.2 - Increase in Operating Costs:

A. If in any calendar year during the term of this Lease, the Port's annual operating costs (as hereinafter defined) shall be higher than such costs for the year ending December 31, 1988, HML for the succeeding year shall pay, in addition to the basic monthly rental herein reserved and the operating cost, an amount equal to its pro rata percent of the amount of such cost increase based upon its square footage occupied to the whole Terminal 2 Administration Building for the year ending December 31, 1988, and its full share as determined above for all successive years thereafter. Annual operating costs shall consist of those costs incurred during any calendar year for real estate taxes, utilities, and common area janitorial. The determination of such costs and their allocation shall be in accordance with generally accepted accounting principles applied on a consistent basis.

B. During December of each calendar year or as soon thereafter as practicable, the Port shall give HML written notice of its estimate of amounts payable under Paragraph "A" above for the ensuing calendar year. On or before the tenth of each month during the ensuing calendar year, HML shall pay to the Port 1/12 of such estimated amounts, provided that if such notice is not given in December, HML shall continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to the Port that the amounts payable under Paragraph "A" above for the current calendar year will vary from its estimate by more than 5%, the Port shall, by written notice to HML, revise its estimate for such year, and subsequent payments by HML for such year shall be based upon such revised estimate.

C. Within 90 days after the close of each calendar year or as soon after such 90 day period as practicable, the Port shall deliver to HML a statement of amounts payable under Paragraphs "A" and "B" above for such calendar year verified by accountants employed by the Port, and such verified statement shall be final and binding upon the Port and HML. If such statement shows an amount owing by HML that is less than the estimated payments for such calendar year previously made by HML, it shall be accompanied by a refund of the excess by the Port to HML. If such statement shows an amount owing by HML that is more than the estimated payments for such calendar year previously made by HML, HML shall pay deficiency to the Port within 30 days after delivery of the statement. HML shall have access to the records upon which the accountant based its



certified statements, and HML shall have ten working days within which to submit to the Port, in writing, any suggested corrections or revisions. The Port shall then have ten working days within which to respond in writing.

D. If, for any reason other than the default of HML, this Lease shall terminate on a day other than the last day of a calendar year, the amount of increase (if any) in rental or operating costs, excluding real estate taxes, payable by HML applicable to the calendar year in which such termination shall occur shall be prorated on the basis that the number of days from the commencement of such calendar year to and including such termination date bears to 365 irrespective of the actual number of days in the calendar year.

E. In no event shall any decrease in operating cost reduce the base operating costs paid by HML.

Section 3.3 - Place of Payments: Payment shall be to the Port at the Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by HML when due shall bear interest at the rate of 18% per annum. The interest rate of 18% on overdue accounts is subject to periodic adjustment to reflect the Port's then current interest rate charges on overdue accounts.

#### ARTICLE IV. - GENERAL CONDITIONS

Section 4.1 - Warranty: Both parties warrant that, prior to execution and during the term of this Agreement, neither the Port's project manager for the Premises, the Terminal 2 Administration Building, or the Bond Finance Improvements, nor any of the members of the Board of Commissioners of the Port, is a member of the Board of Directors or shareholders of, employed by, or otherwise associated with HML or any entity affiliated with HML; and that no HML officer, director, employee, or agent is a member of the Board of Commissioners of the Port.

Section 4.2 - Improvements: The Port agrees to provide the following improvements to the Premises to accommodate HML at no charge to HML: install a dividing wall in the area described as "Dispatch Area" on Exhibit "A" to create two separate offices; install a door into the newly created office referenced above and rehing the existing door into the Dispatch Area. The Port shall substantially complete the improvements referenced herein by October 10, 1988. Move-in by HML can commence upon execution of this Lease except for the Dispatch Area which area shall be completed as provided herein.

Section 4.3 - Assignment: HML shall not assign this Lease or any interest hereunder, and shall not permit any assignment hereof by operation of law, and shall not subrent or sublet said Premises or any portion thereof, and shall not permit the use or occupancy of said Premises by other than HML and his agents and employees of HML, without first obtaining the written consent of the Port, that consent shall not be unreasonably withheld.

Section 4.4 - Alterations: HML shall make no installations, alterations, modifications, or additions to said Premises without first obtaining the written consent of the Port and all additions, improvements, and fixtures, except the movable office furniture and trade fixtures of HML, made or added either by HML or the Port shall be and remain the property of the Port; provided, however, the Port may require that HML remove upon termination of the Lease any additions made or fixtures added by HML at HML's expense.

Section 4.5 - Uses: HML shall not use or permit in said Premises anything that will increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow the Port to obtain reduced rates for long term insurance policies; or maintain anything that may be unreasonably dangerous to life or limb; or in any manner alter said building or any portion thereof except as provided herein; or overload the floors; or permit anything to be done upon said Premises in any way tending to create a nuisance to to disturb the Port or any other tenants of the building, or to injure the reputation of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any immoral or illegal purposes; and that HML shall comply at HML's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises, provided that such compliance shall not require structural changes or improvements to the Premises.



Section 4.6 - Janitorial: HML shall be responsible for its own janitorial expense for the Premises.

Section 4.7 - Utilities: HML shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the leased Premises, except for lighting, heating, air conditioning, water, sewer, gas and electrical service which shall be provided by Port. Electrical service to be provided shall be limited to normal office use. The Portland Building and Office Managers Association (BOMA) published statistics for average utility costs per square foot for Portland suburban office space shall be used as a guide in determining "normal office use" of electrical power. If HML's electrical use exceeds BOMA's average utility rate by 5% for any given year of this lease or extension thereof, Port may charge the HML a surcharge for such use. The surcharge shall be that amount by which the utility usage of HML exceeds the BOMA average utility rate.

The HML shall not, without the Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said Premises other than that normal to office use. No electric wiring, satellite or cable receiving equipment, electronic transmitting devices other than telephone, telex or telecopier machine shall be installed, maintained or operated on said Premises except with the approval of and in a manner satisfactory to the Port; and in no event shall the HML overload the electrical circuits from which the HML obtains current.

Section 4.8 - Taxes: Port shall pay all real property taxes applicable to the Premises: provided, however, that HML shall pay, in addition to rent, any increase in real property taxes applicable to the Premises. Such additional payment shall be made by HML within thirty days after receipt of Port's written statement setting forth the amount of such increase and the computation thereof. If, for any reason, HML shall hold over its occupancy of Premises after the expiration of the term of this Lease as provided for in Section 18 herein, HML shall be liable for payment of real property taxes applicable to Premises for the year in which said holdover occurs with no proration.

As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes or any tax on personal property which may be imposed by any city, county, state or federal government, or any special district or agency.

HML shall pay before delinquency, all taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings and all personal property of HML contained in the Premises or elsewhere, provided that HML may, in good faith, contest the levying of such taxes and in such event may permit the taxes so contested to remain undischarged and unsatisfied during the period of such contest. When possible, HML shall

cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Port. If any of the HML's said personal property shall be assessed with Port's real property, HML shall pay Port the taxes attributable to HML within ten days after receipt of a written statement setting forth the taxes applicable to HML's property.

Section 4.9 - Liability: HML agrees fully to indemnify, save harmless, and defend the Port, its commissioners, officers, and employees from and against that portion of all losses, expenses, claims, and actions, including all expenses incidental to the investigation and defense thereof of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property to the extent, proximately caused by the willful malfeasance or negligence of HML, or its employees or agents in the use or occupancy of the Premises; provided that the Port shall give to HML prompt and reasonable notice of any such claims or actions known to the Port, and HML shall have the right to investigate, compromise, and defend same, only to the extent that such claim is not proximately caused by the negligence of the Port or its employees or agents.

In the event that there is any bodily injury at, or property damage to any portion of the Premises involving HML or any third party, HML shall immediately notify the Port's Claims Manager and shall cooperate in the Port's investigation of such incident. HML shall make



all reports or documents concerning the incident, except for medically and legally privileged information, available to the Port and cooperate with the Port in investigating, compromising, or litigating the claim against third parties.

For any property damage done to the Premises proximately caused by negligence of HML or the breach of the Agreement, HML shall be given the option of repairing the damage or having the Port repair the damage at HML's expense.

Section 4.10 - Vacation: Upon vacation or abandonment of the Premises by HML prior to the expiration of the Lease term without written consent of the Port endorsed hereon, the Port may forthwith enter upon the Premise or any portion thereof and relet and otherwise exercise control over the same and that for the purpose of such reletting the said Port is authorized at the cost of HML to make any repairs, changes, alterations, or additions in or to said demised Premises that may be necessary in the opinion of the Port for the purpose of such reletting, and such entry and control shall not release HML from the obligations herein, but HML shall nevertheless remain liable and continue bound, unless the Port, at the Port's election, shall cancel the Lease and in the event cancellation shall be effected and the Port and HML released from all obligations thereunder thereafter to accrue, upon the mailing of such notice of cancellation by the Port to HML at HML's last known address.

Section 4.11 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises, HML, or any of HML's agents, employees, or other persons claiming the right of admittance.

Section 4.12 - Inspection: The Port and the Port's agents, janitors, workmen, and engineers may retain and use a pass-key to the Premises described herein to enable them to examine said Premises from time to time with reference to any emergency or to the general maintenance of said Premises, of for the purposes of exhibiting the same.

Section 4.13 - Premises Care: HML shall at all times take good care of the demised Premises and shall keep and maintain the leased Premises and all improvements of any kind, that may be erected, installed, or made thereon by HML, in good and substantial repair and condition thereon by HML, in the same good and substantial repair and condition as when first occupied, reasonable wear and tear excepted. HML shall provide proper containers for trash and garbage and shall keep the leased Premises free and clear of rubbish, debris, and litter at all times. The Port shall at all times during ordinary business hours have the right to enter upon and inspect such Premises. Such inspections shall be made only at a mutually agreeable time.

Section 4.14 - Surrender: At the expiration or sooner termination of this Lease, HML will surrender and deliver up said Premises to the Port or those having the Port's estate therein, in the same condition as HML now receives said Premises, ordinary wear and tear and damage by fire and the elements alone excepted.

Section 4.15 - Action/Suit: If any suit or appeal thereof is instituted by either party for the enforcement of any covenant contained in this Lease, the prevailing party shall recover, in addition to costs and disbursements, such attorney's fees as the court may adjudge reasonable to be allowed in such suit, action, or appeal thereof.

Section 4.16 - Events of Default: The following shall be "Events of Default":

A. Default in Rent: Failure of HML to pay any rent or other charges as provided herein within 10 days after its due provided that Port shall first give HML written notice that the rent or charges are past due, and HML thereafter shall have three working days within which to make payment. HML's liability to the Port for default shall survive termination of this Lease.

B. Default in Other Covenants: Failure of HML to comply with any term or condition or fulfill any obligation of this Agreement, other than the payment of rent, or other charges within 10 days after written notice by the Port specifying the nature of the default with reasonable



particularity; provided, however, that, if the default is of such a nature that it cannot be completely remedied within the 10 day period, such default shall not be deemed an Event of Default if HML begins correction of the default within the 10 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

C. Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of HML; an assignment by HML for the benefit of creditors; the filing by HML of a voluntary petition in bankruptcy; an adjudication that HML is bankrupt or the appointment of a receiver of the properties of HML; the filing of an involuntary petition of bankruptcy and failure of HML to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on HML's interest in this Agreement and failure of HML to secure discharge of the attachment or release of the levy of execution within 10 days.

D. Abandonment: Failure of HML for 15 days or more to occupy the property for one or more of the purposes permitted under this Agreement unless such failure is excused under other provisions of this Agreement.

Section 4.17 - Notice of Default: In the event of a default under the provision of this Agreement, the Port will provide HML a notice of default in writing by certified mail.

Section 4.18 - Remedies on Default: In the event of termination on default, the Port shall be entitled to request immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term the value of HML's obligations to pay rent under this Lease, plus the reasonable cost of reentry and reletting, including, without limitation, the cost of any cleanup, refurbishing, removal of HML's property and fixtures, or any other expense occasioned by HML's failure to quit the demised Premises upon termination or to leave them in the required condition, any reasonably necessary remodeling costs, attorney's fees, court costs, brokers commissions, and advertising costs, plus the unpaid cost of any tenant improvements being amortized over the term of this Lease, plus the amount of the loss of reasonable rental value from the date of default until a new tenant has been, or, with the exercise of reasonable diligence, could have been secured.

Section 4.19 - Liens: HML shall not suffer or permit any mechanic's lien to be filed against the fee of the demised Premises nor against HML leasehold interest in said Premises by reason of work, labor, services, or materials thereof through or under HML and nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of the Port, express or implied, by inference or otherwise to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the demised Premises or any part thereof, nor as giving HML any right, power, or authority to contract for or permit

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the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's lien against the fee of the demised Premises. If any such mechanic's lien shall at any time be filed against demised Premises, HML shall cause the same to be discharged of record within 20 days after the date of filing the same of record, either by payment or posting of an appropriate bond, within twenty days after the date of filing the same.

Section 4.20 - Holding Over: If the HML shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, the HML shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance; and (2) the Port shall have the right to adjust the rental payments, charges, or use fees upon 30 days written notice to HML; and (3) Such month to month tenancy may be terminated at any time by written notice from the Port to the HML. In the event of hold over beyond June 30 of any year, HML shall be responsible for payment of property taxes for the entire tax year without proration.

Section 4.21 - Regulations: The Port, for the proper maintenance of said building; the rendering of good service, and the providing of safety, order, and cleanliness, may make and enforce regulations appropriate for such purposes but not enlargement of or inconsistent with the terms, covenants, and conditions of this Lease.



Section 4.22 - Waiver: Any waivers shall be in writing. The covenants of this Lease are continuing covenants and the waiver by the lessor of breaches of said covenants shall not be deemed a waiver of subsequent breaches thereof.

Section 4.23 - Modifications: The Lease may not be modified except by endorsement in writing attached to this Lease, dated, and signed by all the parties hereto, and the Port shall not be bound by any oral or written statement of any servant, agent, or employee modifying this Lease.

Section 4.24 - Parties: The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto, and the words "Port" and "HML" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations that may be or become parties hereto.

Section 4.25 - Subordination: This Lease shall be subject and subordinate to such liens and encumbrances as are now on or as the Port may hereafter impose on the land and building, and HML shall upon request of the Port, execute and deliver agreements of subordination consistent herewith.

Section 4.26 - Insurance: HML shall maintain comprehensive, general, and automobile liability insurance for the protection of HML, its directors, officers, servants, and employees, insuring HML against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to or occasioned by reason of the lease of the Premises with insurance of not less than \$5,000,000 combined single limit. The policy will cover the legal, contractual, and assumed liability of HML pursuant to this Agreement. Such insurance shall not be invalidated by any act, neglect, or breach of contract by HML.

HML shall maintain in force Worker's Compensation insurance, including coverage for Employer's Liability and Longshore and Harbor Worker's Compensation Act. HML shall furnish to the Port a certificate, that shall be consistent with HML's obligations under this Agreement, and shall furnish copies of the policies, if requested by the Port, evidencing the date, amount, and type of insurance that has been procured pursuant to this Agreement. All policies of insurance will provide for not less than 30 days written notice to the Port and HML before such policies may be revised, nonrenewed, or cancelled.

Section 4.27 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter

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changed by the parties by notice in writing, notices shall be sent to the  
Port at the Port of Portland, Post Office Box 3529, Portland, Oregon  
97208, and to HML, P.O. Box 2287, Seattle, Washington  
98111

Date of Service of such notice is date such notice is deposited in a  
post office of the United States Post Office Department, postage prepaid.

PUGET SOUND TUG & BARGE CO., dba  
HAWAIIAN MARINE LINES

By

Albert M. Mander  
Vice President

By

Timothy M. Mander  
Assistant Secretary

THE PORT OF PORTLAND

By

Robert A. Mander  
President

By

Charles Swenson  
Assistant Secretary

APPROVED AS TO FORM:

Bruce R. Mander  
Counsel for HML

APPROVED AS TO LEGAL SUFFICIENCY:

W. A. Phillips  
Counsel for The Port of Portland

APPROVED BY COMMISSION ON:

9-14-88

STATE OF OREGON )

) SS.



LEASE AMENDMENT NO. 1

THIS AMENDMENT NO. 1 is entered into by and between the PORT OF PORTLAND ("Port") and PUGET SOUND TUG & BARGE COMPANY, dba HAWAIIAN MARINE LINES, (hereinafter referred to as "HML"),

W I T N E S S E I H:

WHEREAS, the Port and HML have entered into a Lease for a portion of the Terminal 2 facility dated September 14, 1988 ("Original Lease"); and

WHEREAS, the Port and HML desire to add approximately 402 square feet of improved space to the Premises as shown on the drawing "T-2 Administration Building, Second Floor", dated October, 1986 (Drawing No. T-2 86-502 8/77), attached hereto as Exhibit "A", and made a part hereof, which additional 402 square feet shall become a part of the Premises as defined in the Original Lease; and

WHEREAS, the parties have negotiated certain other terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

I

Section 3.1 of the Original Lease shall be deleted in its entirety and the following substituted in its place:

A. Basic Rent: HML shall pay the Port rent based on a rate of \$9 per square foot per annum, equal to \$1,689.00 per month for the total square footage leased of approximately 2,252 square feet, subject to final survey referenced herein. Rent shall be payable on the first day of each month in advance, except that rent for the first month has been paid upon the execution of this Lease and the Port acknowledges receipt of this sum. In addition to the first month's rent, HML has paid \$1,387.50 as and for a deposit (hereinafter "Lease Deposit"). The Port by its signature to this Lease acknowledges receipt of said rent and Lease Deposit. The Lease Deposit shall be held by the Port, free of any claim of HML for return of principal or interest thereon, except that the Lease Deposit shall be applied to the last month's rent or may be applied to any default of Lessee under this Lease. In the event the Lease Deposit is used by the Port to cure a default in whole or in part, the Port shall provide HML with notice and HML shall immediately restore the Lease Deposit to its original amount.

B. Base Operating Costs: In addition to the basic rent contained in Subparagraph "A" of this Section, HML shall pay the Port \$3 per square foot per annum on the total square footage leased of 2,252 square feet, for the total base operating cost of \$6,756, payable in the sum of \$563.00 per month beginning at the commencement of the term of this Lease. The

base operating cost shall be subject to adjustment in accordance with Section 3.2 of this Lease.

III.

This Amendment shall be effective on November 9, 1988.

IV.

Except as modified herein, the Original Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 this 9<sup>th</sup> day of November, 1988.

PUGET SOUND TUG & BARGE CO., dba  
HAWAIIAN MARINE LINES

By

James B. King  
EXECUTIVE VICE PRESIDENT

By

Diane N. Pearce  
SECRETARY

PORT OF PORTLAND

By

Kent Orin  
President

By

Barb Swensen  
Assistant Secretary

APPROVED AS TO FORM:

Bruce A.  
Counsel for HML

APPROVED AS TO LEGAL SUFFICIENCY

DA. Kelly  
Counsel for The Port of Portland

APPROVED BY COMMISSION:

11-9-88



LEASE OF IMPROVED SPACE

THIS LEASE, dated this 15<sup>th</sup> day of February, 1990, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and HOEGH LINES AGENCIES, INC., a corporation organized under the laws of the State of Delaware (hereinafter referred to as "Lessee").

RECITALS

WHEREAS, the Port desires to lease certain office space located in the Terminal No. 2 Administration Building to the Lessee, and said office space being more particularly described below; and

WHEREAS, the Lessee is desirous of leasing said office space;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

ARTICLE I. - PREMISES

Section 1.1 - Description of Premises: The Port hereby leases to Lessee, and Lessee leases from the Port on the terms and conditions stated below, approximately 583 square feet of office space located on the

third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified on Drawing No. T-2 86-502 8/76, attached hereto as Exhibit A and made a part hereof, and any existing improvements thereon, and appurtenances thereto, (hereinafter referred to as "Premises"). The actual square footage may be adjusted based upon a final survey performed by the Port. Upon construction or installation of any improvements or additional improvements, additions, or changes to improvements in, under, or upon the Premises (each an "Improvement" and collectively the "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises: The Lessee shall use the Premises only for the following purpose(s): office use.

1.2.1 No other use shall be made of the Premises without the written approval of the Port. Lessee shall not cause or permit any conduct on the Premises that would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any environmental law. Without limiting the foregoing, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of hazardous substances, as defined in Section 6.2, without the written approval of the Port.

1.2.2 The Lessee shall not use or permit in the Premises anything that shall increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building, or to injure the reputation of the building; or to use or permit the use of said the Premises for lodging or sleeping purposes or for any immoral or illegal purposes; and that the Lessee shall comply at the Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said the Premises.

Section 1.3 - Appurtenant Rights: The Lessee shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of the Port to exercise its governmental powers over the common areas.



1.3.1 The Lessee, its customers, agents, representatives, and invitees shall have the nonexclusive right to use any areas designated by the Port as "Common Areas", such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas", as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by the Port within Terminal 2 where such areas have been designated or may be designated in the future by the Port as areas to be used by the general public or in common by tenants.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of the Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct, alter, or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to eliminate such Common Areas;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: The initial term of this Lease shall commence upon the substantial completion of improvements as set forth in Section 4.1 herein, and the term shall continue through the date exactly two (2) years following the commencement of this Lease as provided herein ("Lease Term"), unless the Lease is earlier terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from the commencement day of this Lease to the date one year following the commencement day of this Lease of each year.

Section 2.2 - Taxability of Port Bonds: This Lease shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Premises. It is a material condition of this Lease that the Port's bond counsel, of the Port's choosing, be able to issue an opinion that interest earned by holders of the Port Terminal 2 Reconstruction General Obligation Bonds will not be caused by this Lease to be includable in such holder's Gross Income under Internal Revenue code Section 103, as amended. The parties shall negotiate any modifications of this Lease to insure that its terms will permit the Port to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both the Port and the Lessee. In the event that the parties cannot agree upon the terms necessary to obtain

legal opinion, the Port may cancel this Lease upon written notice to the Lessee.

### ARTICLE III. - RENT

Section 3.1 - Basic Rent: The Lessee shall pay, in advance, to the Port as rent the sum of \$694.74 per month based on a rental rate of \$14.30 per square foot per year for the building space (hereinafter "Basic Rent").

Section 3.2 - Adjustment in Basic Rent: "Fiscal Year" as used herein shall mean July 1 to June 30 of any year throughout the term of this Lease or any extension thereof. At the beginning of the second Fiscal Year following the commencement date of this Lease, and at the beginning of each Fiscal Year thereafter during the term of this Lease and any renewal or extension thereof, the Basic Rent shall be subject to an operating cost adjustment. Such annual adjustment shall be based on the Lessee's proportionate share, as defined in Section 3.3.1 herein, of any percentage of increase in the Port's operating costs for the Building above those for the base year. "Base Year" shall mean the first Fiscal Year following the commencement date of this Lease. The Base Year of this Lease shall be July 1, 1990 to June 30, 1991. As used herein "Operating Costs" shall mean all costs of operating and maintaining the Building as determined by the Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof), all water and sewer charges; the cost of



steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses; permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; the annual amortized capital improvement costs (amortized over such a period as the Port may select and at a current market interest rate), such Operating Expenses to be allocated in accordance with standard real estate accounting practice. In no event shall any decrease in operating costs reduce the Basic Rent.

3.3.1 "Lessee's Proportionate Share" as used herein shall mean the square footage area of the Premises leased to the Lessee, divided by the total leaseable square footage area of the Building of which the Premises is a part. The Lessee's Proportionate Share on the commencement date of this Lease shall be 5.6 percent.

Section 3.4 - Time and Place of Payments: Payments are due on the first day of each month and delinquent if not paid when due, except that, upon execution of this Lease, Lessee shall pay the Port its monthly Basic Rent due for the first full calendar month of the Lease Term together with its monthly Basic Rent due for the initial partial calendar month, if any. Each monthly Basic Rent shall be paid when due, without notice or demand and without any abatement, deduction, or set-off. In the event the Lease commences after the first day of a month, the Basic Rent for the first month shall be prorated based on the number of days in the calendar month being prorated.

3.4.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current charge for overdue accounts.

3.4.2 Security Deposit: In addition to payments of Basic Rent and Operating Charge, the Lessee shall deposit with the Port, upon execution of this Lease, the sum of \$694.74 as security for the Lessee's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest on account of Lessee and shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by the Lessee. If the Lessee defaults in the performance of any of its obligations under this Lease, including without limitation the payment of Basic Rent or Operating Charge, the Port may, but shall not be obligated to, use, apply, or retain all or any part of the security deposit to the extent required for the payment of any amount in default or any amount which the Port may expend or incur by reason of the Lessee's default. If the Port so uses, applies, or retains all or any part of the security deposit, the Lessee shall upon demand immediately deposit with the Port an amount equal to the amount so used, applied, or retained. If the Lessee fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to the Lessee within 30 days after the expiration of this Lease and delivery to the Port of possession

of the Premises and all payments required to be made by the Lessee hereunder. In the event of any sale of the Port's interest in the Premises, the Port shall have the right to transfer the security deposit to the purchaser thereof and the Port shall thereupon be released by the Lessee from all liability for refund of the security deposit.

Section 3.5 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent or Operating Charge which is not paid when due. In the event the Port elects to accept a tender of payment of rent after the time when such payment was due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: No construction, alteration, or improvement shall be made on or to the Premises without the written consent of the Port. To obtain Port consent, at least 45 days prior to any construction, alteration, demolition, or changes upon the Premises or Improvements, the Lessee shall submit to the



Port final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon. Should the Port fail to take action concerning plans and/or specifications submitted to it within 45 days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration; and in the case of a change or alteration involving demolition and the construction of a new building, the value of the new building will be of a value not less than the value of the demolished building. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "as-built" drawings of the completed improvements prepared by an architect licensed by the State of Oregon.

Section 4.2 - Conduct of Business: The Lessee agrees to continuously during the Lease Term conduct and carry on its business on the Premises and shall keep such Premises and Improvements open for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond the Lessee's reasonable control.

Section 4.3 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs and alterations thereto at Lessee's sole expense. Such repairs shall be in accordance with Section 4.1 herein. The Lessee shall provide at, the Lessee's expense, janitorial service for the Premises and proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "as-built" drawings of the completed improvements prepared by an architect licensed by the State of Oregon.

Section 4.2 - Conduct of Business: The Lessee agrees to continuously during the Lease Term conduct and carry on its business on the Premises and shall keep such Premises and Improvements open for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond the Lessee's reasonable control.

Section 4.3 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs and alterations thereto at Lessee's sole expense. Such repairs shall be in accordance with Section 4.1 herein. The Lessee shall provide at, the Lessee's expense, janitorial service for the Premises and proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.



Section 4.4 - Taxes: Except as provided in Section 3.3, the Port, on behalf of the Lessee, shall pay all real property taxes applicable to the Premises. If the term of this Lease or any extension thereof shall end after June 30 of any year, or if the Lessee shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and such extension shall extend the lease beyond June 30 of any year, the Lessee shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.2 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, or federal government or, any special district or agency. Such taxes shall remain the responsibility of the Lessee.

4.4.3 The Lessee shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and all personal property of the Lessee contained in the Premises or elsewhere. When possible, the Lessee shall cause said trade fixtures, furnishings, equipment, and all other personal property to be assessed and billed separately from the real property of the Port. If any of the Lessee's said personal property shall be assessed with the Port's real property, the Lessee shall pay the Port the taxes attributable to the Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to the Lessee's property.

Section 4.5 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.6 - Utilities: The Lessee shall promptly pay any charges for telephone and all other charges for utilities which may be furnished to the Premises at the request of or for the benefit of the Lessee, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by the Port. Electrical and natural gas service to be provided by the Port shall be limited to normal office use. The Portland Building and Office Managers Association (BOMA) published statistics for average utility costs per square foot for Portland suburban office space shall be used as a guide in determining "normal office use" for electrical power and heating

by natural gas. If Lessee's electrical use and/or natural gas use exceeds BOMA's average utility rate by 5% for any given year of this Lease or extension thereon, the Port may charge the Lessee a surcharge for such use. The surcharge shall be that amount by which the utility usage of Lessee exceeds the BOMA average utility rate.

4.6.1 The Lessee shall not, without the Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, or telecopier machine, shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to the Port. In no event shall the Lessee overload the electrical circuits from which the Lessee obtains current.

Section 4.7 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having obtained first the Port's written consent thereto as to size, construction, location, and general appearance and then all applicable governmental approvals.



Section 4.8 - Safety Requirements:

4.8.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.8.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.9 - Access to Premises: The Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency. 4.9.2 The Port shall not be liable for the consequences of admitting or refusing

to admit to the Premises the Lessee or any of the Lessee's agents or employees or any other persons claiming the right of admittance.

#### ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: The Port shall maintain the exterior walls, roof, and HVAC system of the Building and the landscaping immediately surrounding the Building and provide janitorial service for the common areas.

Section 5.2 - Improvements: The Port shall make the following improvements: Install demising walls, doors, ceiling tiles, lights, electrical outlets, carpeting as described on Exhibit B attached hereto and made a part hereof.

Section 5.3 - Delivery:

5.3.1 The Port shall complete the improvements as described in Section 5.2 herein so that the Premises is substantially complete on or before March 15, 1990. "Substantially Complete" shall mean in such a condition that the Lessee is able to commence move-in during final completion of the improvements. Final completion shall be completed by no later than April 1, 1990.

5.3.2 The Lessee shall have the right to possession of the Premises as of the date of Substantial Completion of Improvements specified in Section 5.2 hereof. In the event the Port is unable to deliver possession of the Premises on or before March 15, 1990, the Lessee shall owe no rent until notice from the Port tendering possession to the

Lessee. If possession is not so tendered within 60 days following said date, then the Lessee may elect to cancel this Lease by notice to the Port within 10 days following expiration of the 60 day period. The Port shall have no liability to the Lessee for delay in delivering possession.

Section 5.4 - Port's Warranty of Ownership: The Port warrants that it is the owner of the Building and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.5 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. Except for improvements to be made by the Port pursuant to Section 5.2 herein, the Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any loss, damage, injury, or costs caused by the condition or available lawful uses of the Premises.



ARTICLE VI. - INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - General Indemnity: The Port shall not in any event be liable for any injury to any person or damage to any property occurring on or about the Premises, unless such injury or damage results from the wilful acts or gross negligence of the Port. Lessee covenants and agrees to indemnify, save, and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only the wilful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.2 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.1 above, the Lessee agrees to indemnify, save, and hold harmless the Port, its commissioners, officers, agents, and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials, contaminants, or regulated

substances, as those terms are defined by federal, state, or local law or regulation ("Hazardous Substances"), including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986) as amended; the Toxic Substances Control Act (15 U.S.C. 2601, et. seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.) as amended by the Hazardous and Solid Waste Amendments Act of 1984; the Clean Water Act (33 U.S.C. §1251, et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); 1985 Oregon Laws Chapter 733; and 1987 Oregon Laws Chapter 540, as the same may be amended from time to time, (collectively "Environmental Law"), on the Premises by Lessee, whether prior to or during the Lease Term, including, but not limited to: (a) claims of third parties, including governmental agencies, for damages, response costs, indolences or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) the expense, including fees of attorneys, engineers, paralegals and experts, reporting the existence of said hazardous substances or contaminants to any agency of the State of Oregon or the United States as required by applicable laws or regulations; (d) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees,

witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts. Such damages, costs, liabilities and expenses shall include such as are claimed to be owed by any regulating and administering agency. As used in Article VI, the word "Premises" shall be deemed to include the soil and water table thereof.

6.2.1 Promptly upon written notice from the Port or from any governmental entity, the Lessee shall remove from the Premises (including without limitation the soil or water table thereof) all Hazardous Substances, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations.

Section 6.3 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.1 and 6.2 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.



Section 6.4 - Insurance:

6.4.1 The Lessee shall maintain business interruption insurance equal to its fixed financial obligations, including rental payments to the Port for a period of six months. The amount of this coverage will be reevaluated with the Port on a yearly basis. Policy(ies) will remain in force during the term of the Lease and any extensions thereof. The proceeds of any business interruption insurance shall be used first to continue payments to the Port. Proceeds over and above those amounts due to the Port may be used by the Lessee in whatever manner deemed prudent by the Lessee.

6.4.2 The Lessee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of the Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance limits of not less than \$1,000,000 combined single limit.

6.4.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Lessee.

6.4.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain

in full force during the term hereof and shall provide for not less than 30 days written notice to the Port and the Lessee before such policies may be revised, nonrenewed, or cancelled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.4.5 The Port shall have the right to review the limits of insurance required herein from time to time. In the event the Port determines that such limits should be increased or lowered, the Port will provide notice to the Lessee of such determination. The Lessee shall, if the limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.5 - Waiver of Subrogation: The Port and the Lessee agree that each forfeits any right of action that it may later acquire against the other of the parties to the Lease for loss or damage to its property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of the Lessee's property damage policy or policies.

Section 6.6 - Damage or Destruction of Premises: If the Premises or Improvements are partially or totally damaged or destroyed by fire or other casualty, the Port shall have the option and shall within 60 days from the damage or destruction, notify the Lessee in writing whether or not the Port elects to repair, rebuild, restore the Premises or to terminate this Lease. Upon giving such notice to terminate, this Lease

shall terminate on the date specified in the notice. The Port shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises.

#### ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender. The Lessee's obligations under this paragraph shall be subordinate to the provisions of Section 6.6, related to destruction.



Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements constructed by the Lessee, pursuant to Section 4.1, within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements. Title to all other Improvements shall remain with the Port.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's fixtures or personal property which the Port has required Lessee to remove under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such fixtures or personal property. Any items of Lessee's fixtures or personal property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the

option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 If the Lessee fails to remove such fixtures as required by this Lease, the Port may do so and charge the cost to the Lessee with interest at the Port's then current interest rate from the date of expenditure. In addition to any other applicable liability, the Lessee shall be liable to the Port for the cost of removal, transportation to storage, and storage, with interest at the Port's then current interest rate on all such expenses from the date of expenditure by the Port.

7.5.3 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Holding Over: If the Lessee shall hold over after the expiration or termination of the Lease Term or any extension thereof with the consent of the Port, and shall not have agreed in writing with the

Port upon the terms and provisions of a new lease prior to such expiration, at the Port's discretion, the Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee a month-to-month tenant, the Lessee shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month-to-month subject to the payment of all rent in advance, the monthly rate being proportional to the previous Basic Rent and Additional Rent; (2) title to Improvements shall have vested in the Port pursuant to Section 7.4 hereof, unless the Port provided Lessee with notice to remove such; (3) the Port shall have the right to adjust the rental payments, charges or use fees upon 30 days written notice to the Lessee; and (4) such month-to-month tenancy may be terminated at any time by written notice from the Port to the Lessee. In the event the Port deems the Lessee as a tenant at sufferance, the Port shall be entitled to exercise any rights pursuant thereto. In the event of hold over beyond June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law.

#### ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due.



8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within 30 days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if the Lessee begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within 10 days.

8.1.4 Failure to Occupy: Failure of the Lessee for 30 days or more to occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1, the Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 If Lessee fails to perform any of its obligations under this Lease, the Port, without waiving any other remedies for such failure, may (but shall not be obligated to) perform such obligation for the account and at the expense of the Lessee, without notice in a case of emergency, and in any other case if such failure continues for 15 days after written notice from the Port specifying the nature of the failure. The Port shall not be liable to Lessee for any claim for damages resulting from any such action by the Port. Lessee agrees to reimburse the Port upon demand for any expenses incurred by Lessor pursuant to this Lease together with interest thereon from the date of payment at the Port's then current interest rate.

8.2.3 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by landlord, from time to time, at landlord's election, and nothing in this Lease will be deemed to require landlord to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in

this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by landlord of any such rights or remedies will not preclude the simultaneous or later exercise by landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### ARTICLE IX. - GENERAL PROVISIONS

##### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Port and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If the Lessee is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 Other than the subleases for which the Port has given written consent concurrently with this Lease, in determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use. The Port may require increased rent prior to consent if the use is retail.



Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. If a court of competent jurisdiction declares this Lease to be a public contract under ORS Chapter 279, then the parties agree that the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Worker's Compensation, and minimum

and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, and (3) all federal, state, regional and local Environmental Laws.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

Section 9.6 - No Light or Air Easement: The reduction or elimination of the Lessee's light, air, or view will not affect the Lessee's liability under this Lease, nor will it create any liability of the Port to the Lessee.

Section 9.7 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.8 - Warranty of Authority: The individuals executing this agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.9 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.10 - Delinquency Charges: Lessee acknowledges that late payment by Lessee to the Port of any rent due hereunder will cause the Port to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any rent is not received by the Port when it is due, Lessee shall pay to the Port a delinquency charge in accordance with Section 3.4. The parties hereby agree that such delinquency charge represents a fair and reasonable payment by Lessee. Acceptance of any delinquency charge by the Port shall in no event constitute a waiver of Lessee's default with respect to the



overdue amount in question, nor prevent the Port from exercising any of the other rights and remedies granted hereunder.

Section 9.11 - Consent of Port:

9.11.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from the Executive Director of The Port of Portland.

9.11.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended the Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in writin all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said the Premises.

Section 9.12- Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or served personally at 700 N.E. Multnomah,

Portland, Oregon, 97232, and to the Lessee, 1999 Harrison Street, Suite 930, Oakland, California 94612. Date of Service of such notice is date such notice is served personally or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.13 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.14 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.15 - Abandonment: Upon abandonment or vacation of the Premises by the Lessee prior to the expiration of the Lease Term without written consent of the Port, the Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. For the purpose of such reletting the Port is authorized, at the cost of the Lessee, to make any repairs, changes, alterations, or additions in or to the Premises which may be necessary in the sole discretion of the Port for the purpose of such reletting and compliance with all applicable laws. Such entry and control shall not release the Lessee from the

obligations herein, but the Lessee shall nevertheless remain liable and continue to be bound, unless the Port, at the Port's election, shall cancel the Lease. Cancellation shall be effected and the Port and the Lessee released from all obligations under this Lease upon the mailing of such notice of cancellation by the Port to the Lessee at the Lessee's last known address, provided that the Lessee shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, the title to the Improvements shall automatically be vested in the Port.

Section 9.16 - Estoppel Certificates: Lessee agrees to execute and deliver to Lessor, at any time and within 10 days after written request, a statement certifying (i) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications), (ii) the dates to which rent has been paid, (iii) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default, and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The Parties agree that any statement delivered pursuant to this Section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation.



Section 9.17 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.18 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.19 - Force Majeure: If by reason of force majeure the Port is unable in whole or in part to carry out its obligations under this Lease, the Port shall not be deemed in default during the continuance of such inability, provided written notice thereof is given to the Lessee. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders or restraints of the United States of America or the State of Oregon, or their respective departments, agencies, or officials, or any civil or military authority; insurrections; riots; or any other similar cause or event not reasonably within the control of the Port and not resulting from its negligence. The Port agrees, however, to

remedy with all reasonable dispatch the cause or causes preventing the Port from carrying out this Lease.

Section 9.20 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the Lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

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Section 9.21 - Absence of Brokers: Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.22 only, the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorneys', accountants', and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

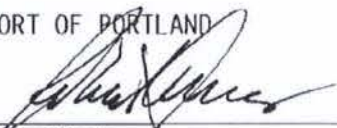
IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

By   
Frank D. Troxel, President

By \_\_\_\_\_

THE PORT OF PORTLAND

By   
President

By   
Assistant Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Counsel for Lessee

APPROVED AS TO LEGAL SUFFICIENCY

  
Counsel for The Port of Portland

APPROVED BY COMMISSION ON:

2-14-90

LGL:L-T2





FEDERAL MARITIME COMMISSION

WASHINGTON, D.C. 20573-0001

December 17, 1991

Ms. Fay Harper  
Contracts Administrator  
Port of Portland  
Box 3529  
Portland, Oregon 97208

RE: Agreement Name : Terminal Use  
Agreement Between Star Shipping A/S  
and the Port of Portland at  
Terminals 4 and 2  
Agreement No. : 224-200465-001  
Date Received : December 12, 1991  
Date Effective : December 12, 1991

Dear Ms. Harper:

This acknowledges receipt of the above-captioned Agreement which has been filed with the Commission pursuant to section 5(a) of the Shipping Act of 1984. The Agreement became effective on the date shown above pursuant to the exemption in 46 CFR § 572.307(e). A numbered copy of the Agreement bearing its effective date is enclosed for your records.

Very truly yours,

Bureau of Trade Monitoring  
& Analysis

By:

Office of Agreements & Information  
Management

Enclosure

POPT2100181



# Port of Portland

Box 3529 Portland, Oregon 97208  
503/231-5000

224-200465-01

RECEIVED

'91 DEC 12 12:11

December 4, 1991

Joseph C. Polking  
Secretary  
Federal Maritime Commission  
100 "L" Street, N.W.  
Washington, D.C. 20573

RE: MODIFICATION OF FMC AGREEMENT NO. 224-200465. TERMINAL USE  
AGREEMENT BETWEEN STAR SHIPPING A/S AND THE PORT OF PORTLAND AT  
TERMINALS 1 AND 2  
4pk

By this letter, both parties to the above Agreement consent to extend  
said Agreement, for two additional months beyond the expiration date,  
presently set out in FMC Agreement No. 224-200465--31 December 1991.  
The extension will be through February 29, 1992. All other terms and  
conditions of the original Agreement remain the same.

STAR SHIPPING A/S

By C.C. Kalve  
Ole Kalve  
Star Shipping (USWC) Inc.  
As Agent

THE PORT OF PORTLAND

By Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By Paul C. Elsner  
Paul Elsner  
Assistant General Counsel



Port of Portland offices located in Portland, Oregon U.S.A.  
Chicago, Illinois, Washington, D.C., Hong Kong, Seoul, Taipei, Tokyo

POPT2100182



224 200465 113

TERMINAL USE AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
STAR SHIPPING A/S

RECEIVED

'91 JAN - 2 1991

THIS AGREEMENT is made and entered into at Portland, Oregon, by and between THE PORT OF PORTLAND, a Port District existing under the laws of the State of Oregon, hereinafter called the "PORT," and STAR SHIPPING A/S, a Norwegian corporation, referred to hereinafter as "STAR."

W I T N E S S E T H:

In consideration of the mutual covenants and agreements set forth to be kept and performed by the parties, the PORT and STAR agree as follows:

ARTICLE I - TERM

Section 1.1:

Subject to Article II herein, this Agreement shall be for a term of twelve months. It is the intent of the parties that, after filing and designation of an effective date, pursuant to Article II, the provisions of Section 5.3 of this Agreement will commence on January 1, 1991, and end on December 31, 1991.

Section 1.2:

Parties agree that this Agreement shall terminate if Star signs a terminal use agreement with Stevedoring Services of America and/or Oregon Terminal Company. The termination shall be effective ten days after notification by Star is received by the Port. The Port will notify the FMC if this Agreement is terminated.

ARTICLE II - EFFECTIVE DATE

This Agreement shall be filed by the PORT with the Federal Maritime Commission (FMC) pursuant to Section 5 of the Shipping Act of 1984, as amended. This Agreement shall be effective January 1, 1991 or the date received in the office of the FMC, whichever is later. If the FMC rejects this Agreement, this Agreement shall be of no force or effect. Except for the stated effective date of January 1, 1991, the foregoing shall also apply to each amendment to this Agreement filed with the FMC pursuant to Section 5 of the Shipping Act of 1984, as amended.





### ARTICLE III - PREMISES

The Premises shall include the use of Terminal 2 and Terminal 4 and appropriate back-up area immediately adjacent to the dock as assigned by the Port of Portland's Designee, Stevedoring Services of America (SSA) and/or Oregon Terminal Company, in order to achieve efficient utilization of the terminal, in the berth areas. Bulk cargoes shall not be included for purposes of calculating revenue sharing under Section 5.3.

### ARTICLE IV - USE OF PREMISES

#### Section 4.1 - Use:

STAR shall have a right or privilege to use the Premises for any vessel operations within the capabilities of the Premises, specifically steel and forest products, and for either eastbound and westbound containers and cargo, subject to the following conditions and reservations:

#### Section 4.2 - Services:

The PORT or its Designee shall perform truck, rail, and barge loading and unloading, and terminal services for STAR. STAR agrees to pay for those services and any other services for which STAR is responsible as required in the movement of cargo or containers on or over the Premises in accordance with Port of Portland Terminal Tariff No. 6, supplements and reissues thereto, subject to Article V, except at Terminal 2 and/or Terminal 4 where agreement with Designee may differ. STAR shall have the right to contract for vessel stevedoring and dock-handling services for loading and unloading of cargo between the vessel and the place of rest on the terminal. Any traditional longshore and warehouse work assignment provisions of the currently effective ILWU-PMA Agreements, which are incorporated by reference in the Agreement between International Longshoremen's and Warehousemen's Union Locals 8 and 40 and the Port of Portland, their lessees and assigns, shall be applicable to the signatories of the Agreement. STAR to provide necessary information to PORT/designee in timely manner to enable proper staffing levels.

#### Section 4.3 - Assignment:

STAR shall not have the right to assign any of its rights hereunder, or to allow use of any of the Premises by others, without prior written approval of PORT, except that STAR may engage subsidiaries and/or agents to perform STAR's own services as described herein.

#### Section 4.4 - Access to Premises:

The PORT hereby grants to STAR the right to ingress and egress to the Premises. The PORT reserves the right to use the wharves, rail tracks, berth, and the dock apron area at Terminal 2 and/or Terminal 4. PORT shall have the unrestricted right of ingress and egress to the area.

## ARTICLE V - RENT

### Section 5.1 - Applicable Rates:

STAR agrees to pay to PORT or its Designee dockage, wharfage, wharf demurrage, storage and other services provided by PORT or its Designee at PORT's or its Designee's request at the level of rates published in said Terminal Tariff No. 6, supplements thereto and reissues thereof, subject to the following terms.

### Section 5.2 - Port of Call:

STAR agrees to use Port of Portland as a designated Columbia River Port of Call for the duration of this Agreement for loading and unloading of steel and forest products, as well as any other commodities.

### Section 5.3 - Revenue Sharing:

PORT and STAR shall share in wharfage and dockage on Port earned revenue regardless of payee with respect to STAR operations at the Premises as follows:

| <u>Revenue</u>        | <u>PORT</u> | <u>STAR</u> |
|-----------------------|-------------|-------------|
| \$ 0 - \$150,000      | 100%        | 0%          |
| \$150,001 - \$300,000 | 85%         | 15%         |
| Over \$300,000        | 75%         | 25%         |

### Section 5.4 - Minimum Annual Guarantee:

STAR agrees to a minimum revenue to the Port of \$200,000 per year wharfage and dockage during the term of the agreement. STAR further agrees to a minimum of twenty sailings at Port of Portland facilities during the term of the Agreement. In the event STAR fails to provide the minimum annual guarantee, the PORT shall immediately invoice and the line shall pay, within payment terms as outlined in Port of Portland Terminal Tariff No. 6, supplements thereto and reissues thereof, the difference between the revenue sharing and full tariff on all cargo.

## ARTICLE VI - PAYMENT

### Section 6.1:

STAR agrees to pay any dockage amounts due under the terms hereof when STAR operates the vessel, on a vessel-by-vessel basis as per invoices submitted by the PORT and/or their Designee at rates and charges published in Terminal Tariff No. 6, revisions and reissues thereto, subject to the applicable revenue-sharing levels provided in Section 5.3.

### Section 6.2:

Terms are cash. All charges and advances are due and payable as accrued. Invoices issued by the PORT are due and payable upon presentation. Any invoice, absent of any



dispute or disagreement with any part of invoices and statements, remaining unpaid for a period of thirty calendar days after the date of the invoice is delinquent and shall be subject to the tariff delinquency charge. In the event amounts are withheld from payment pursuant to a dispute and such amounts, or a portion thereof are later determined to be owing, such amounts, or portions thereof, shall be subject to a delinquency charge.

Section 6.3:

In the event that STAR terminates this Agreement in accordance with Article X and STAR does not fulfill the minimum annual guarantee as provided in Section 5.4 for the contract year, the PORT shall have the right to invoice and STAR shall pay to the PORT within thirty days of receipt, the difference between the invoices the PORT and/or their Designee has invoiced STAR at the then applicable discount levels per Section 5.3 and the PORT tariff rates without the discount without further recourse by the PORT.

ARTICLE VII - FORCE MAJEURE

Section 7.1:

The duties and obligations of each of the parties hereunder shall be suspended during such time as performance by either party is prevented or made impracticable by occurrences beyond the control of the party affected, and to the extent such occurrences are not due to the fault or negligence of the party affected. Such occurrences shall include, but shall not be limited to strikes, labor disturbances, riots, fire, governmental action, war, acts of God, or other causes of similar nature.

Section 7.2:

The foregoing shall not be considered a waiver of either party's obligation under this Agreement and further, the party seeking relief under this clause shall be required to have used reasonable diligence in seeking to overcome such obstacles, and performance shall have been resumed within a reasonable time after the obstacle is removed.

Section 7.3:

In the event that performance is prevented under the provisions of Section 7.1, or there is reasonable certainty that performance will be prevented for a period of sixty days from the commencement thereof, either party shall have the right to terminate this Agreement by delivering to the other party thirty days written notice of its intent to do so. In such an event, the discount level shall be reduced on a pro rata basis for the period of that contract year effected. The proration shall be based upon the average monthly volume.

ARTICLE VIII - RULES, REGULATIONS AND LAWS

Section 8.1:

STAR agrees to comply with all applicable rules and regulations or ordinances of the PORT pertaining to the Premises or any buildings or structures located thereon either now in existence or hereafter promulgated for the general safety and convenience of the PORT, its tenants, invitees, licensees, and the general public. STAR further agrees to comply with all



applicable federal, state, and municipal laws, ordinances and regulations, and STAR further agrees to indemnify and hold harmless the PORT, its Commissioners, officers, agents, and employees from any liability or penalty which may be imposed by governmental authorities by reason of any asserted violation by STAR or its agents of the foregoing.

Section 8.2:

All notices required under this Contract shall be deemed to be properly served if sent by certified mail to the address listed in this Section, or to such other address as each party may indicate to the other in writing. Until hereafter changed by the parties by notice in writing, notices shall be sent to the PORT at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to Star Shipping (U.S.W.C.) Inc., 425 California Street, San Francisco, California 94104. Date of Service of such notice is date such notice is deposited in a post office of the United State Post Office, postage prepaid, and addressed as provided herein.

ARTICLE IX - WAIVERS

Section 9.1:

No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. Termination under any provision of this Agreement shall not affect any right, obligation, or liability of STAR or the PORT which accrued prior to such termination.

Section 9.2:

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the appellate court.

ARTICLE X - DEFAULT

This Agreement is made upon the condition that if the sums which STAR herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any of the terms, agreements, conditions or covenants herein contained on the part of STAR or should STAR abandon and cease to use the Premises for a period of sixty days at any one time except as provided by Article VII, then and in such event, at the option of the PORT, this Agreement may be terminated. Thereafter the full balance for the entire Agreement term shall be due and payable. No default shall be declared by the PORT as to any breach which may be cured or obviated by STAR until the expiration of thirty days after default and if, during such thirty-day period, such default shall have been cured or obviated.

#### ARTICLE XI - APPLICABLE LAW

It is expressly understood and agreed that this Agreement, including the PORT's obligation to indemnify STAR from the PORT's negligent acts, and all questions arising thereunder shall be construed according to the laws of the State of Oregon and the United States of America.

#### ARTICLE XII - INTEREST IN PROPERTY CREATED

The PORT and STAR agree that the interest created by this Agreement in the property described as Premises is and shall be a terminal use interest in said property and that STAR shall not have any other interest in said property or an interest in any other property described in this Agreement.

#### ARTICLE XIII - INDEMNIFICATION

##### Section 13.1:

STAR shall indemnify, save harmless, and defend the PORT, its commissioners, officers, and employees from and against all claims, actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of STAR or its employees in the use or occupancy of the Premises; provided that the PORT shall give to STAR prompt and reasonable notice of any such claims or actions, and STAR shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of the PORT.

##### Section 13.2:

The PORT shall indemnify, save harmless, and defend STAR, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of the PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that STAR shall give to the PORT prompt and reasonable notice of any such claims or actions, and the PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of STAR.

#### ARTICLE XIV - TAXES AND OTHER GOVERNMENTAL CHARGES

STAR agrees to pay any and all lawful taxes, assessments, or governmental charges that may be levied by any tax-levying body upon any taxable interest which STAR acquires under this Agreement or any taxable possessory right which STAR may have in or on the Premises.



IN WITNESS WHEREOF, the parties hereto have subscribed names as of the  
28<sup>th</sup> day of December, 1990.

STAR SHIPPING A/S

By: \_\_\_\_\_

Ole Kalve  
Star Shipping (USWC) Inc.  
As Agent

THE PORT OF PORTLAND

By: \_\_\_\_\_

Robert L. Woodell  
Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By: \_\_\_\_\_

Dean Phillips  
Assistant General Counsel

APPROVED BY COMMISSION

\_\_\_\_\_



224-200604 :

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BY  
WTC

**TERMINAL USE AGREEMENT  
BETWEEN  
STAR SHIPPING A/S  
AND  
THE PORT OF PORTLAND**



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TERMINAL USE AGREEMENT  
BETWEEN  
STAR SHIPPING A/S  
AND  
THE PORT OF PORTLAND

THIS AGREEMENT is made and entered into at Portland, Oregon, by and between STAR SHIPPING A/S, a Norwegian corporation, referred to hereinafter as "STAR," and THE PORT OF PORTLAND, a Port District existing under the laws of the State of Oregon, hereinafter called the "PORT."

W I T N E S S E T H:

In consideration of the mutual covenants and agreements set forth to be kept and performed by the parties, the PORT and STAR agree as follows:

ARTICLE I - TERM

Section 1.1:

This Agreement shall be for a term of three years effective on the date established according to Article II. As used herein, "Contract Year" shall mean the period from February 1 through January 31 of the following year.

ARTICLE II - EFFECTIVE DATE

This Agreement shall be filed by the PORT with the Federal Maritime Commission (FMC) pursuant to Section 5 of the Shipping Act of 1984, as amended. It shall be effective February 1, 1992, or the date received in the office of the FMC, whichever is later.

ARTICLE III - PREMISES

The Premises shall be Terminal 2 and Terminal 4 and appropriate back-up area immediately adjacent to that dock as assigned by Stevedoring Services of America (SSA) and/or Oregon Terminal Company (OTC), as may be appropriate.

ARTICLE IV - USE OF PREMISES

STAR shall have a right to use the Premises for all vessel operations within the capabilities of the Premises, for the handling of general cargo subject to the following conditions and reservations:

Section 4.1 - Berthing Requirements:

STAR services can be described as follows: Pacific (PAC), Mediterranean (MED), North Europe (BC), North Europe Expanded (BCX) service, and such inbound cargo to be



moved over Terminal 2. It is understood by both parties that the designated terminals for the respective services are:

|     |             |
|-----|-------------|
| PAC | T-2 and T-4 |
| MED | T-2         |
| BC  | T-2         |
| BCX | T-2         |

Section 4.2 - Services:

The PORT, SSA or OTC shall perform terminal handling services, and truck, rail, and barge loading and unloading for STAR. STAR agrees to pay for those services and any other services STAR uses or is otherwise responsible for on or over the Premises in accordance with Article V. STAR shall have the right to contract separately for vessel stevedoring and dock-handling services for loading and unloading of cargo between the vessel and the place of rest on the terminal.

Section 4.3 - Port of Call:

STAR agrees to use the Port as a designated Pacific Northwest port for all non-charter cargo for their PAC, MED, BC, and BCX service for the term of this Agreement.

Section 4.4 - Assignment:

STAR shall not assign any of its rights hereunder, or allow use of the Premises by others without the prior written approval of PORT. STAR may engage subsidiaries and/or agents to perform STAR's own services as described herein.

Section 4.5 - Access to Premises:

The PORT hereby grants STAR ingress to and egress from the Premises during ordinary business hours. PORT shall have the right of ingress and egress over the Premises when that is not inconsistent with the other provisions of this Agreement and when not being fully utilized by STAR. Both SSA and OTC, when authorized by the PORT, shall have access to and use of the Premises when needed for their operations so long as such use is not inconsistent with this Agreement.

ARTICLE V - REVENUE SHARING

Section 5.1 - Applicable Rates:

All cargo moving in STAR's operations on or over the Premises is subject to the Port's Terminal Tariff No. 6, supplements thereto and reissues thereof (hereinafter called "Tariff"). STAR agrees to pay all applicable PORT charges for services when provided at STAR's request at rates published in "Tariff," subject only to the revenue sharing set out in Section 5.2 and other terms of this Agreement.

Section 5.2 - Revenue Sharing:

PORT and STAR shall share in wharfage and dockage on Port earned revenue regardless of whether the PORT, SSA or OTC is the payee with respect to STAR operations

at the Premises as follows:

Port  
70%

STAR  
30%

Dockage and wharfage revenue generated as a result of bulk cargoes handled by STAR shall not be included for purposes of calculating revenue sharing under this section. In the event a new bulk facility at Terminal 5 is operating during the term of this Agreement, STAR and PORT agree to negotiate the revenue sharing percentages concerning bulk cargoes as set out above.

If during the term of this Agreement, STAR elects to shift vessel itineraries for any of the designated services between Terminal 2 and Terminal 4, the Port reserves the right and agrees to renegotiate revenue sharing levels set out in this Section.

Section 5.3 - Projected Annual Volumes:

As of the date of this Agreement, STAR anticipates annual volumes as set out in Table I. Star does not have fixed tonnage contracts with shippers. The contracts are requirements contracts, meaning that the quantity of cargo the shippers are able to sell to a certain designated area is the quantity tendered to STAR for shipment. It is understood that the figures in Table I are not guaranteed, but that STAR will make every effort to meet the indicated volume.

Table I

|                               |         |     |
|-------------------------------|---------|-----|
| Baled Wood Pulp ex-dock       | 112,000 | MT  |
| Baled Wood Pulp ex-barge      | 25,000  | MT  |
| Lumber                        | 30,000  | MBM |
| Plywood                       | 5,000   | MT  |
| Aluminum Ingots, Sows, T-Bars | 140,000 | MT  |

Section 5.4 - Minimum Annual Guarantee:

STAR guarantees minimum annual revenue to the PORT, prior to application of the revenue sharing formula of Section 5.3, of \$600,000 for wharfage and dockage for each of the three years of this Agreement. After Year 1, should business conditions change such that the anticipated annual volumes set out in Table I change significantly, the PORT and STAR agree to renegotiate the Minimum Annual Revenue Guarantee per Section 5.4 and the Revenue Sharing levels set out in Section 5.2. In the event STAR fails to meet the Minimum Annual Revenue Guarantee in any of the three contract years, STAR shall pay PORT either the amount of the shortfall of the Minimum Annual Revenue Guarantee or, in the alternative, the amount of the revenue share paid STAR by the PORT for that Contract Year, with interest at a rate not to exceed prime rate 2 percent. The choice shall be STAR's, but in any event, payment shall be made not later than the following March 15.



## ARTICLE VI - TERMINATION

STAR has the right to terminate this Agreement at any time after completion of the first full contract year, provided STAR gives the PORT 90 days advance written notice of their intent to terminate. In the event of such a termination, STAR has the obligation to pay the appropriate pro-rata share of the Minimum Annual Revenue Guarantee for the then current Contract Year as set out in Section 5.4 and as determined by the PORT. If STAR does not fulfill the Minimum Annual Revenue Guarantee, the PORT shall have the right to invoice and STAR shall thereupon pay to the PORT, within thirty days of invoice date either the difference between the amount PORT has received from STAR and the pro-rated Minimum Annual Revenue Guarantee or the amount of revenue share paid STAR pursuant to Section 5.2, with interest at a rate not to exceed prime plus 2 percent. The choice will be STAR's.

## ARTICLE VII - PAYMENT

### Section 7.1:

STAR agrees to pay all charges imposed by the terms of this Agreement, on a vessel-by-vessel basis as per invoices submitted by the PORT, SSA or OTC as those charges are set out in the "Tariff."

### Section 7.2:

Terms are cash. All charges and advances are due and payable as accrued. Invoices issued by the PORT, SSA or OTC are due and payable upon presentation to STAR. Any invoice, or part thereof, remaining unpaid for a period of more than thirty calendar days after the date of the invoice shall be deemed delinquent and shall be subject to all appropriate delinquency charges as specified in the "Tariff." In the event payment by STAR is withheld as subject to a good faith dispute and such amounts, or portions thereof, are later determined to be rightly due and owing, said amounts, or portions thereof, shall be subject to a delinquency charge as of the first day of delinquency.

## ARTICLE VIII - FORCE MAJEURE

### Section 8.1:

The duties and obligations of each of the parties hereunder shall be suspended during such time as performance by either party is prevented or made impracticable by occurrences beyond the control of the party affected, and to the extent such occurrences are not due to the fault or negligence of the party affected. Such occurrences shall include, but are not limited to strikes, labor disturbances, riots, fire, governmental action, war, acts of God, mill closures, obstructions to navigation or other causes of similar nature. The party seeking relief under this clause shall be required to have used reasonable diligence in seeking to overcome such obstacles, and performance shall have been resumed within a reasonable time after the obstacle is removed.

### Section 8.2:

The foregoing shall not be considered a waiver of either party's obligation under this Agreement and upon written notice from STAR indicating the effective date of such stoppage,



the Minimum Annual Revenue Guarantee shall be reduced on a pro-rata basis for the contract year.

Section 8.3:

In the event that performance is prevented under the provisions of Section 8.1, or there is reasonable certainty that performance will be prevented for a period of sixty days or more, either party may terminate this Agreement by delivering to the other party thirty days written notice of its intent to do so. In such an event, the Minimum Annual Revenue Guarantee shall be reduced on a pro-rata basis for the period of that contract year effected. The proration shall be based upon the average monthly volume.

In that event, the PORT shall invoice STAR and STAR shall pay, within thirty days of the invoice date, either the difference between the amount PORT has received from STAR and the pro-rated Minimum Annual Revenue Guarantee or the amount of revenue share paid STAR pursuant to Section 5.2, with interest at a rate not to exceed prime plus 2 percent. The choice shall be STAR's.

ARTICLE VIX - RULES, REGULATIONS AND LAWS

STAR agrees to comply with all applicable rules and regulations or ordinances of the PORT pertaining to the Premises or any buildings or structures located thereon either now in existence or hereafter promulgated for the general safety and convenience of the PORT, its tenants, invitees, licensees, and the general public. STAR further agrees to comply with all applicable federal, state, and municipal laws, ordinances and regulations, and STAR further agrees to indemnify and hold harmless the PORT, its Commissioners, officers, agents, and employees from any liability or penalty which may be imposed by governmental authorities by reason of any asserted violation by STAR or its agents of the foregoing.

ARTICLE X - NOTICES

All notices required under this Contract shall be deemed to be properly served if sent by certified mail to the address listed in this Section, or to such other address as each party may indicate to the other in writing. Until hereafter changed by the parties by notice in writing, notices shall be sent to the PORT at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to STAR at Star Shipping (Canada) Ltd., 1400-355 Burrard, Vancouver, B.C., CANADA V6C 2H4. Date of Service of such notice is date such notice is deposited in a post office, postage prepaid.

ARTICLE XI - WAIVERS

Section 11.1:

No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. Termination under any provision of this Agreement shall not affect any right, obligation, or liability of STAR or the PORT which accrued prior to such termination.

Section 11.2:

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the appellate court.

ARTICLE XII - DEFAULT

This Agreement is made upon the condition that if the sums which STAR herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if default be made in any of the terms, agreements, conditions or covenants herein contained on the part of STAR, or should STAR abandon and cease to use the Premises for a period of sixty days at any one time except as provided by Article VIII, then and in such event, at the option of the PORT, this Agreement may be terminated. Thereafter the full balance for the entire Agreement term shall be due and payable. No default shall be declared by the PORT as to any breach which may be cured or obviated by STAR until the expiration of thirty days after default and if, during such thirty-day period, such default shall have been cured or obviated.

ARTICLE XIII - APPLICABLE LAW

It is expressly understood and agreed that this Agreement, including the PORT's obligation to indemnify STAR from the PORT's negligent acts, and all questions arising thereunder shall be construed according to the laws of the State of Oregon and the United States of America, and jurisdiction shall be in the circuit Court of the State of Oregon, Multnomah County.

ARTICLE XIV - INTEREST IN PROPERTY CREATED

The PORT and STAR agree that the interest created by this Agreement in the property described as Premises is and shall be a terminal use interest in said property and that STAR shall not have any other interest in said property or an interest in any other property described in this Agreement.

ARTICLE XV - INDEMNIFICATION

Section 15.1:

STAR shall indemnify, save harmless, and defend the PORT, its commissioners, directors, officers, and employees from and against all claims, actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of STAR or its employees in the use or occupancy of the Premises; provided that the PORT shall give to STAR prompt and reasonable notice of any such claims or actions, and STAR shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of the PORT.



Section 15.2:

The PORT, to the extent permitted by law, shall indemnify, save and hold harmless and defend STAR, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of the PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that STAR shall give to the PORT prompt and reasonable notice of any such claims or actions, and the PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of STAR.

**ARTICLE XVI - TAXES AND OTHER GOVERNMENTAL CHARGES**

STAR agrees to pay any and all lawful taxes, assessments, or governmental charges that may be levied by any tax-levying body upon any taxable interest which STAR acquires under this Agreement or any taxable possessory right which STAR may have in or on the Premises.

IN WITNESS WHEREOF, the parties hereto have subscribed names as of the 9th  
day of January, 1991.<sup>2</sup>

STAR SHIPPING A/S

By: Howard Harrington  
Howard Harrington  
Star Shipping (USWC) Inc.  
As Agent

THE PORT OF PORTLAND

By: Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By: Paul C. Elsner  
Paul C. Elsner  
Assistant General Counsel

APPROVED BY COMMISSION

Date: 1-8-92



LEASE OF IMPROVED SPACE BETWEEN

THE PORT OF PORTLAND

AND

PUGET SOUND TUG AND BARGE COMPANY dba HAWAIIAN MARINE LINES

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## LEASE OF IMPROVED SPACE

THIS LEASE, dated this 12<sup>th</sup> day of February, 199<sup>2</sup>, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and PUGET SOUND TUG AND BARGE COMPANY dba HAWAIIAN MARINE LINES, a corporation organized under the laws of the State of Washington (hereinafter referred to as "Lessee").

### RECITALS

WHEREAS, the Port desires to lease certain improvements located in the Terminal 2 Administration Building to the Lessee, and said improvements being more particularly described below; and

WHEREAS, the Lessee is desirous of leasing said improvements;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

### ARTICLE I. - PREMISES

Section 1.1 - Description of Premises: The Port hereby leases to Lessee, and Lessee leases from the Port on the terms and conditions stated below, approximately 1,426 square feet of office space located in the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified on Drawing No. T-2 86-502 8/77 (A-6), attached hereto as Exhibit A and made a part hereof, and any existing improvements thereon, and appurtenances thereto, (hereinafter referred to as "Premises"). The actual square footage may be adjusted based upon a final survey performed by the Port. Upon construction or installation of any improvements or additional

improvements, additions, or changes to improvements in, under, or upon the Premises (each an "Improvement" and collectively the "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises: The Lessee shall use the Premises only for the following purpose(s): office space.

1.2.1 No other use shall be made of the Premises without the written approval of the Port. Lessee shall not cause or permit any conduct on the Premises that would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any environmental law. Without limiting the foregoing, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of hazardous substances, as defined in Section 6.2, without the written approval of the Port.

1.2.2 The Lessee shall not use or permit in the Premises anything that shall increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building, or to injure the reputation of the building; or to use or permit the use of said the Premises for lodging or sleeping purposes or for any immoral or illegal purposes; and that the Lessee shall comply at the

Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said the Premises.

Section 1.3 - Appurtenant Rights: The Lessee shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of the Port to exercise its governmental powers over the common areas.

1.3.1 The Lessee, its customers, agents, representatives, and invitees shall have the nonexclusive right to use any areas designated by the Port as "Common Areas", such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas", as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by the Port within Terminal 2 where such areas have been designated or may be designated in the future by the Port as areas to be used by the general public or in common by tenants.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of the Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage




unpermitted use of the Common Areas;

1.3.2.4 To construct, alter, or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to eliminate such Common Areas;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas.

## ARTICLE II. - TERM

*9/14* Section 2.1 - Term: The initial term of this Lease shall commence on ~~January~~ <sup>FEBRUARY</sup> 1, 1992, and the term shall continue through June 30, 1995 ("Lease Term"), unless the Lease is earlier terminated under the provisions herein. 

Section 2.2 - Taxability of Port Bonds: This Lease shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by the Port to finance the Premises. It is a material condition of this Lease that the Port's bond counsel, of the Port's choosing, be able to issue an opinion that interest earned by holders of the Port Terminal 2 Reconstruction General Obligation Bonds will not be caused by this Lease to be includable in such holder's Gross Income under Internal Revenue code Section 103, as amended. The parties shall negotiate any modifications of this Lease to insure that its terms will permit the Port to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both the Port and the Lessee. In the event that the parties cannot agree upon the terms necessary to obtain legal opinion, the Port may cancel this Lease upon written notice to the Lessee.

## ARTICLE III. - RENT

Section 3.1 - Basic Rent: The Lessee shall pay, in advance, to the Port as rent the sum of \$1,069.50 per month based on a rental rate of \$9.00 per square foot per year for the building space (hereinafter "Basic Rent").

3.1.1 Operating Charge: In addition to Basic Rent, the Lessee shall pay \$469.39 per month based on \$3.95 per square foot of building space per year ("Operating Charge"). Said Operating Charge shall be subject to adjustment in accordance with Section 3.2 of this Lease.

3.1.2 Additional Rent: Lessee shall pay to the Port as additional rent (hereinafter "Additional Rent") in equal monthly installments, for the Port's cost of constructing the improvements to the Premises as described in Section 5.2 herein, amortized over the initial lease term at an interest rate of ten percent (10%).

Section 3.2 - Adjustment in Operating Charge: "Fiscal Year" as used herein shall mean July 1 to June 30 of any year throughout the term of this Lease or any extension thereof. Beginning July 1, 1992 and at the beginning of each Fiscal Year thereafter during the term of this Lease and any renewal or extension thereof, the Operating Charge shall be subject to an operating cost adjustment. Such annual adjustment shall be based on the average change in the Port's Operating Costs for the Building as defined herein over those for the previous Fiscal Year. As used herein "Operating Expenses" shall mean all costs of operating and maintaining the Building as determined by the Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof), all water and sewer charges; the cost of steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses;

permits for the operation and maintenance of the Building and all of its component elements and mechanical systems, such Operating Expenses to be allocated in accordance with standard real estate accounting practice. The Port will provide supporting documentation for any expense increases if requested by Lessee.

Section 3.3 - Time and Place of Payments: Payments are due and payable on the first day of each month and delinquent if not paid when due, except that, upon execution of this Lease, Lessee shall pay the Port its monthly Basic Rent, Operating Charge, and Additional Rent due for the first full calendar month of the Lease Term together with its pro-rated monthly Basic Rent, Operating Charge, and Additional Rent due for the initial partial calendar month, if any. Each monthly Basic Rent and Operating Charge shall be paid when due, without notice or demand and without any abatement, deduction, or set-off.

3.3.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current charge for overdue accounts.

Section 3.4 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent, Operating Charge, and Additional Rent, which were not paid when due. In the event the Port elects to accept a tender of such payments after the time when such payments are due, then such acceptance shall not constitute a waiver of Lessee's continuing obligation to make such payments when and as



required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations by Lessee: No construction, alteration, or improvement shall be made on or to the Premises without the written consent of the Port. To obtain Port consent, at least 45 days prior to any construction, alteration, demolition, or changes upon the Premises or Improvements, the Lessee shall submit to the Port final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon. Should the Port fail to take action concerning plans and/or specifications submitted to it within 45 days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration; and in the case of a change or alteration involving demolition and the construction of a new building, the value of the new building will be of a value not less than the value of the demolished building. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "as-built" drawings of the completed improvements prepared by an architect licensed by the State of Oregon.

Section 4.2 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises in good and substantial repair and condition, and shall promptly make all necessary repairs and alterations thereto at Lessee's sole expense. Such repairs shall be in accordance with Section 4.1 herein. The Lessee shall provide at, the Lessee's expense, janitorial service for the Premises and proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Except as provided in Section 3.3, the Port, on behalf of the Lessee, shall pay all real property taxes applicable to the Premises. If the term of this Lease or any extension thereof shall end after June 30 of any year, or if the Lessee shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and such extension shall extend the lease beyond June 30 of any year, the Lessee shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.3.2 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, or federal government or, any special district or agency. Such taxes shall remain the responsibility of the Lessee.

4.3.3 The Lessee shall pay before delinquency, all other taxes



and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and all personal property of the Lessee contained in the Premises or elsewhere. When possible, the Lessee shall cause said trade fixtures, furnishings, equipment, and all other personal property to be assessed and billed separately from the real property of the Port. If any of the Lessee's said personal property shall be assessed with the Port's real property, the Lessee shall pay the Port the taxes attributable to the Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to the Lessee's property.

Section 4.4 - Liens: Except with respect to construction liens resulting from the improvements and alternations made by the Port pursuant to Exhibit B, the Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for



telephone and all other charges for utilities which may be furnished to the Premises at the request of or for the benefit of the Lessee, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by the Port. Electrical and natural gas service to be provided by the Port shall be limited to normal office use. The Portland Building and Office Managers Association (BOMA) published statistics for average utility costs per square foot for Portland suburban office space shall be used as a guide in determining "normal office use" for electrical power and heating by natural gas. If Lessee's electrical use and/or natural gas use exceeds BOMA's average utility rate by 5% for any given year of this Lease or extension thereon, the Port may charge the Lessee a surcharge for such use. The surcharge shall be that amount by which the utility usage of Lessee exceeds the BOMA average utility rate.

4.5.1 The Lessee shall not, without the Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, or telecopier machine, shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to the Port. In no event shall the Lessee overload the electrical circuits from which the Lessee obtains current.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising

device without having obtained first the Port's written consent thereto as to size, construction, location, and general appearance and then all applicable governmental approvals.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises, except as provided by the Port as provided herein. The Port shall provide and maintain fire sprinklers and fire walls as required by the responsible government authority.

Section 4.8 - Access to Premises: The Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all



parties except in cases of emergency.

4.8.1 The Port shall not be liable for the consequences of admitting or refusing to admit to the Premises the Lessee or any of the Lessee's agents or employees.

#### ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: The Port shall maintain the exterior walls, the electrical branch circuiting (the in-the-wall electrical wiring), the plumbing system, the fire sprinkler system, the roof, and HVAC system of the Building and the landscaping immediately surrounding the Building and provide janitorial service for the common areas.

Section 5.2 - Improvements: The Port shall make the improvements described on Exhibit B and Exhibit C, attached hereto. The Port shall have no liability for disruption of Lessee's business due to construction of improvements but shall exercise reasonable efforts to minimize disruption caused by the construction activity. The cost of such work shall not exceed \$5,000. The construction to be performed by the Port as described herein, shall not include any necessary adjustments in phone service as a result of such construction, including the removal or installation of phone outlets, phone jacks, or phone wiring. Such adjustments to the phone service shall be the responsibility of the Lessee and shall be the Lessee's cost.

Section 5.3 - Delivery: The Port shall exercise its best efforts to complete the improvements as described in Section 5.2 herein so that the Premises are substantially complete in as expeditious a manner as possible but in no event later than August 15, 1991, unless otherwise agreed upon by the parties.



Section 5.4 - Port's Warranty of Ownership: The Port warrants that it is the owner of the Building and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.5 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. Except for improvements to be made by the Port pursuant to Section 5.2 herein, the Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any loss, damage, injury, or costs caused by the condition or available lawful uses of the Premises.

#### ARTICLE VI. - INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - General Indemnity: The Port shall not in any event be liable for any injury to any person or damage to any property occurring on or about the Premises, unless such injury or damage results from the wilful acts or gross negligence of the Port. Lessee covenants and agrees to indemnify, save, and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only

the wilful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.2 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.1 above, the Lessee agrees to indemnify, save, and hold harmless the Port, its commissioners, officers, agents, and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials, contaminants, or regulated substances, as those terms are defined by federal, state, or local law or regulation ("Hazardous Substances"), including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986) as amended; the Toxic Substances Control Act (15 U.S.C. 2601, et. seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.) as amended by the Hazardous and Solid Waste Amendments Act of 1984; the Clean Water Act (33 U.S.C. §1251, et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); 1985 Oregon Laws Chapter 733; and 1987 Oregon Laws Chapter 540, as the same may be amended from time to time, (collectively "Environmental Law"), on the Premises by Lessee, during the term of the previous lease with Lessee dated September 14, 1988 for the Premises and additional office space and during the term of this Lease, including, but not



limited to: (a) claims of third parties, including governmental agencies, for damages, response costs, indemnities or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) the expense, including fees of attorneys, engineers, paralegals and experts, reporting the existence of said hazardous substances or contaminants to any agency of the State of Oregon or the United States as required by applicable laws or regulations; (d) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts. Such damages, costs, liabilities and expenses shall include such as are claimed to be owed by any regulating and administering agency.

6.2.1 Promptly upon written notice from the Port or from any governmental entity, the Lessee shall remove from the Premises all Hazardous Substances, whether in existence during the lease term of the previous lease between the parties dated September 14, 1988 for the Premises and additional office space, or during the term of this Lease, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations.

Section 6.3 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.1 and 6.2 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and



discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.4 - Insurance:

6.4.1 The Lessee shall provide the Port with a lease bond with a face amount of not less than \$5,000, as security to the Port for the Lessee's full and faithful performance and observance of its obligations under this Lease. The lease bond shall be in approximately the form provided in Exhibit D, attached hereto and made a part hereof. The Port shall be entitled to sufficient proceeds of the lease bond to satisfy any failures of Lessee to make payments to the Port at any time during the Lease Term or to satisfy the Port for its costs, expenses, or damages in the event the Lessee fails to faithfully perform its obligations under the terms of this Lease. The lease bond shall be obtained from a bonding company licensed to transact business in the State of Oregon and satisfactory to the Port. United Pacific Insurance is approved by the Port as an issuer of a lease bond required pursuant to this paragraph. Nothing stated in this Section shall waive any Port right to declare a default and exercise any and all remedies available under this Lease in the event the Port is required to make demand for payment on the lease bond. The lease bond shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by the Lessee. If the Lessee defaults in the performance of any of its obligations under this Lease, including without limitation the payment of Basic Rent, the Port may, but shall not be obligated to, use, apply, or retain all or any part of the lease bond to the extent required for the payment of any amount in default or any amount which the Port may expend or incur by reason of the Lessee's default. If the Port so uses, applies, or retains all or any part of the lease bond, the Lessee shall provide the Port with evidence that the bonding company will

extend the monetary limits of the lease bond in an amount equal to the amount so used, applied, or retained, or issue a new bond with a face amount not less than \$5,000, such evidence or new bond to be provided within 20 days of the initial date the Port makes the demand for payment on the lease bond, provided that in the event Lessee is unable to restore the Lease Bond, Lessee shall provide to the Port a cash deposit security in an amount necessary to restore the funds used, applied or retained.

6.4.2 The Lessee shall maintain an occurrence form commercial general, including a fire legal liability endorsement, and automobile liability insurance policy or policies for the protection of the Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance limits of not less than \$2,000,000 combined single limit for each of the aforementioned policies.

6.4.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds as respects liabilities assumed under this Lease.

6.4.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance or bond that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 days written notice to the Port and the Lessee before such policies may be nonrenewed, canceled, or materially revised with respect to the requirements of the Port as set forth in this Lease. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided



pursuant to this Lease.

6.4.5 The Port shall have the right to review the limits of insurance required herein from time to time. In the event the Port determines that such limits should be increased or lowered, the Port will provide notice to the Lessee of such determination. The Lessee shall, if the limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.5 - Waiver of Subrogation: The Port and the Lessee agree that each forfeits any right of action that it may later acquire against the other of the parties to the Lease for loss or damage to its property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of the Lessee's property damage policy or policies.

Section 6.6 - Damage or Destruction of Premises: If the Premises or Improvements are partially or totally damaged or destroyed by fire or other casualty, the Port shall have the option and shall within 60 days from the damage or destruction, notify the Lessee in writing whether or not the Port elects to repair, rebuild, restore the Premises or to terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice. The Port shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that Lessee shall be entitled to the insurance proceeds from its own insurance for damage done to Lessee's personal property within the Premises.

#### ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.



Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements constructed by the Lessee, pursuant to Section 4.1, within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements. Title to all other Improvements shall remain with the Port.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of

the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's fixtures or personal property which the Port has required Lessee to remove under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such fixtures or personal property. Any items of Lessee's fixtures or personal property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 If the Lessee fails to remove such fixtures as required by this Lease, the Port may do so and charge the cost to the Lessee with interest at the Port's then current interest rate from the date of expenditure. In addition to any other applicable liability, the Lessee shall be liable to the Port for the cost of removal, transportation to storage, and storage, with interest at the Port's then current interest rate on all such expenses from the date of expenditure by the Port.

7.5.3 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the



Lessee would be required to remove other property.

Section 7.6 - Holding Over: If the Lessee shall hold over after the expiration or termination of the Lease Term or any extension thereof with the consent of the Port, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, at the Port's discretion, the Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee a month-to-month tenant, the Lessee shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month-to-month subject to the payment of all rent in advance, the monthly rate being proportional to the previous Basic Rent; (2) title to Improvements shall have vested in the Port pursuant to Section 7.4 hereof, unless the Port provided Lessee with notice remove such; (3) the Port shall have the right to adjust the rental payments, charges or use fees upon 30 days written notice to the Lessee; and (4) such month-to-month tenancy may be terminated at any time by written notice from the Port to the Lessee. In the event the Port deems the Lessee as a tenant at sufferance, the Port shall be entitled to exercise any rights pursuant thereto. In the event of hold over beyond June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law.

#### ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due, provided that



the Port will give Lessee written notice that the rent or other charges are past due, and Lessee thereafter shall have three (3) working days within which to make payment. Lessee's liability to the Port for default shall survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within 30 days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if the Lessee begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within 60 days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within 10 days.

8.1.4 Failure to Occupy: Failure of the Lessee for 30 days or more to occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1, the Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance, provided that any notice to terminate is effective only if Lessee fails to cure the default within the grace period. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 If Lessee fails to perform any of its obligations under this Lease, the Port, without waiving any other remedies for such failure, may (but shall not be obligated to) perform such obligation for the account and at the expense of the Lessee, without notice in a case of emergency, and in any other case if such failure continues for 15 days after written notice from the Port specifying the nature of the failure. The Port shall not be liable to Lessee for any claim for damages resulting from any such action by the Port. Lessee agrees to reimburse the Port upon demand for any expenses incurred by Lessor pursuant to this Lease together with interest thereon from the date of payment at the Port's then current interest rate.

8.2.3 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by landlord, from time to time, at landlord's election, and nothing in this Lease will be deemed to require landlord to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the



exercise by landlord of any such rights or remedies will not preclude the simultaneous or later exercise by landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### ARTICLE IX. - GENERAL PROVISIONS

##### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Port and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If the Lessee is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation, except that Lessee shall be permitted to assign its rights, duties and obligations herein to a parent or a successor company with the same ownership as Lessee without the need for obtaining such consent, however, Lessee shall notify Port in writing of such assignment within 30 days of such assignment.

9.1.2 Consent in one instance shall not prevent this provision from applying to subsequent assignments or attempted assignments.

9.1.3 Other than the subleases for which the Port has given written consent concurrently with this Lease, in determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use. The Port may require increased rent prior to consent if the use is retail.

##### Section 9.2 - Nonwaiver: Waiver by either party of strict performance



of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. If a court of competent jurisdiction declares this Lease to be a public contract under ORS Chapter 279, then the parties agree that the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Worker's Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, and (3) all federal, state, regional and local Environmental Laws.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law,

statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

Section 9.6 - No Light or Air Easement: The reduction or elimination of the Lessee's light, air, or view will not affect the Lessee's liability under this Lease, nor will it create any liability of the Port to the Lessee.

Section 9.7 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.8 - Warranty of Authority: The individuals executing this agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.9 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.10 - Delinquency Charges: Lessee acknowledges that late payment by Lessee to the Port of any rent due hereunder will cause the Port to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any rent is not received by the Port when it is due, Lessee shall pay to the Port a delinquency charge in accordance with Section 3.4. The parties hereby agree that such delinquency charge represents a fair and reasonable payment by Lessee. Acceptance of any delinquency charge by the Port shall in no event constitute a waiver of Lessee's default with respect to the overdue amount in question, nor prevent the Port from exercising any of the other rights and remedies granted hereunder.

Section 9.11 - Consent of Port:

9.11.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from the Executive Director of The Port of Portland.

9.11.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended the Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in



written consent of the Port, the Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. For the purpose of such reletting the Port is authorized, at the cost of the Lessee, to make any repairs, changes, alterations, or additions in or to the Premises which may be necessary in the sole discretion of the Port for the purpose of such reletting and compliance with all applicable laws. Such entry and control shall not release the Lessee from the obligations herein, but the Lessee shall nevertheless remain liable and continue to be bound, unless the Port, at the Port's election, shall cancel the Lease. Cancellation shall be effected and the Port and the Lessee released from all obligations under this Lease upon the mailing of such notice of cancellation by the Port to the Lessee at the Lessee's last known address, provided that the Lessee shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, the title to the Improvements shall automatically be vested in the Port.

Section 9.16 - Estoppel Certificates: Lessee agrees to execute and deliver to Lessor, at any time and within 10 days after written request, a statement certifying (i) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications), (ii) the dates to which rent has been paid, (iii) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default, and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The Parties agree that any statement delivered pursuant to this Section shall

writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.12- Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or served personally at 700 N.E. Multnomah, Portland, Oregon, 97232, and to the Lessee, P.O. Box 2287, Seattle, Washington 98111, attention: Leila Meehan, contract manager.

Date of Service of such notice is date such notice is served personally or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.13 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.14 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.15 - Abandonment: Upon abandonment or vacation of the Premises by the Lessee prior to the expiration of the Lease Term without

be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation.

Section 9.17 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.18 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.20 - Absence of Brokers: Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.20 only, the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorneys', accountants', and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

Section 9.21 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is



further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the Lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

By Puget Sound Tug & Barge Co.

By Leila Meekau

THE PORT OF PORTLAND

By Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]  
Counsel for The Port of Portland


APPROVED BY COMMISSION ON:

2-12-92

MEMORANDUM

DATE: August 21, 1992

TO: Chris Hatzi  
Dave Madill  
John Hachey  
Ken Frost  
Wendy Chiddix  
Penny Burch

FROM: Fay Harper 

SUBJECT: ASSIGNMENT OF HAWAIIAN MARINE LINES LEASE

Crowley Maritime Corporation has restructured their company into two distinct business units to separate Crowley's common carrier or liner services business from its contract services business. They have formed a new holding company know as Crowley Maritime Corporation (CMC) which will own the stock of two principal operating subsidiaries: Crowley American Transport, Inc. (CAT) to operate the liner services business and Crowley Marine Services, Inc. (CMS) to operate the contact services business. Puget Sound Tug & Barge (which leases office space at Terminal 2) is merged into Crowley Marine Services (CMS).

Please change the name on our T-2 Administration Building rent invoices from Hawaiian Marine Lines to Crowley Marine Services, Inc.

If you have any questions, please give me a call.



APR 92 10



## PUGET SOUND TUG & BARGE COMPANY

A Crowley Company

April 9, 1992

Peggy Krause  
Senior Real Estate Associate  
Port of Portland  
P.O. Box 3529  
Portland, OR 97208

Dear Ms. Krause:

This letter serves as notice that Puget Sound Tug & Barge Co. ("PST&B") will assign by operation of law, effective on or about July 1, 1992, its Lease of Improved Space with Port of Portland dated February 12, 1992 ("the Contract"). Pursuant to a corporate restructuring of Crowley Maritime Corporation, the rights and obligations of PST&B, as set forth in the Contract, will be assigned to and assumed by an operating subsidiary known as Crowley Marine Services, Inc.

On March 20, 1992, the Board of Directors of Crowley Maritime Corporation approved a comprehensive restructuring of the Company into two distinct business units to separate Crowley's common carrier or liner services business from its contract services business. The restructuring will result in the formation of a new holding company, to be known as Crowley Maritime Corporation ("CMC"), which will own the stock of two principal operating subsidiaries: Crowley American Transport, Inc. ("CAT"), which will operate the liner services business, and Crowley Marine Services, Inc. ("CMS"), encompassing the contract services business. These distinct but related operating corporations will reflect the different operational requirements, markets, financing needs, and customers of Crowley's two principal lines of business. As part of the restructuring, PST&B will be merged into CMS. The net effect of the assignment from PST&B to CMS is that the contractual rights and obligations specified in the Contract will be assigned to and assumed by a larger entity that will comprise CMC's contract services transportation business.

CMC and its operating subsidiaries remain committed to providing quality marine transportation services worldwide and to ensuring uninterrupted compliance with all of the Company's various legal obligations.

Very truly yours,

Leila Meehan  
Contract Manager



CONSENT TO ASSIGNMENT

RECITALS

1. By Lease dated February 12, 1992 (Port Lease No. 92-025), PUGET SOUND BARGE COMPANY dba HAWAIIAN MARINE LINES, a corporation organized under the laws of the State of Washington (Assignor) and the PORT OF PORTLAND a port district of the State of Oregon ("Port"), entered into a lease for approximately 1,426 square feet of office space located in Terminal 2 Administration Building, Portland, Oregon.

2. Assignor desires to assign and transfer to CROWLEY MARINE SERVICES, INC., an operating subsidiary of CROWLEY MARITIME CORPORATION, the parent company of Puget Sound Barge Company, a corporation organized under the laws of the State of Delaware (Assignee) all of Assignor's rights and obligations under the Lease.

CONSENT

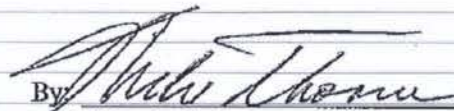
The Port hereby consents to the assignment and transfer by Assignor to Assignee of the Lease, subject to all rights and obligations of Assignee under the assignment and transfer from Assignor being subordinate to, and Assignee strictly complying with, the applicable terms, covenants, and conditions of the Lease as amended or as may be amended in the future.

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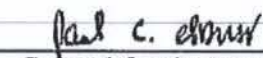
Assignee shall remain liable after the assignment for the performance of all obligations under the Lease, notwithstanding such assignment.

EXECUTED AND DATED: September 2, 1992.

THE PORT OF PORTLAND

By:   
Michael Thorne

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for the Port of Portland

ESN\037.esn

ASSUMPTION

The lease referenced above in this Consent to Assignment is hereby assumed and Assignee hereby agrees to pay and perform all obligations of said Lease according to its terms.

Dated this 25 day of August, 1992.

Crowley Marine Services, Inc.  
LESSEE

By: Leila Meehan

Title: Contract Property Mgr.

ESN037.esn



92-033

**LEASE AGREEMENT  
BETWEEN  
IMT AGENCIES  
AND  
THE PORT OF PORTLAND**

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## LEASE

THIS LEASE dated this 12<sup>th</sup> day of March, 1992, is entered into by and between IMT AGENCIES, dba HOEGH LINES AGENCIES, INC., a corporation duly organized under the laws of the State of Delaware (hereinafter referred to as IMT) and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as PORT).

## RECITALS

WHEREAS, PORT desires to lease certain office space located in the Terminal 2 Administration Building to IMT, said office space being more particularly described below; and

WHEREAS, IMT is desirous of leasing said office space;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

Section 1.1 - Description of Premises: PORT leases to IMT, and IMT leases from PORT, on the terms and conditions stated below, approximately 682 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. T-2 92-3, attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon and

appurtenances thereto (hereinafter referred to as Premises). Upon construction or installation of any improvements, additions, or changes to improvements in, under, or upon the Premises (each an "Improvement" and collectively the "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises: IMT may use the Premises only for the following purposes: office space.

1.2.1 No other use may be made of the Premises without the written approval of PORT. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

1.2.2 IMT shall not use or permit in or on the Premises anything that shall increase the rate of fire insurance thereon or prevent PORT taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow PORT to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any illegal purposes, and that IMT shall comply at IMT's own cost and expense with all orders, notices, regulations, or requirements

of any municipality, state, or other governmental authority respecting the use of said Premises.

Section 1.3 - Appurtenant Rights: IMT shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of PORT to exercise its governmental powers over the Common Areas, as defined herein.

1.3.1 IMT, its customers, agents, representatives, and invitees shall have the nonexclusive right to use the Common Areas, such right to be in common with others to whom PORT has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by PORT within Terminal 2 where such areas have been designated by PORT as areas to be used by the business invitees, by tenants in common with other tenants, or by general public in common with tenants.

1.3.2 PORT reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom PORT may grant or may have granted such rights in such manner as PORT may from time to time so grant;



1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size;

1.3.2.5 To exercise any of PORT's governmental powers over the Common Areas; and

1.3.2.6 To transfer ownership of such Common Areas.

## ARTICLE II - TERM

Section 2.1 - Term: The term of this Lease shall commence upon substantial completion of improvements as set forth in Section 5.2 herein, and the term shall continue through February 28, 1994, unless the Lease is earlier terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from March 1 through February 28 of each year.

Section 2.2 - Renewal Option: If IMT is not in default upon the conclusion of the applicable expiring term, IMT shall have one option to renew this Lease for a period of one year on the same terms and conditions except for the establishment of the rent as herein provided. The day on which the written notice is given as provided herein shall be the "Exercise Date."

Section 2.3 - Taxability of Port Bonds: This Lease shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by PORT to finance the Premises. It is a material condition of this Lease that bond counsel, of PORT's choosing, be able to issue an opinion that interest earned by holders of Port of Portland Terminal 2 Reconstruction General Obligation Bonds will not be caused by this Lease to be included in such holder's Gross Income as defined by Internal Revenue Code Section 61 and as it may be amended. The parties shall negotiate any modifications of this Lease to insure that its terms will permit PORT to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both PORT and IMT. In the event that the parties cannot agree upon the terms necessary to obtain legal opinion, PORT may terminate this Lease upon written notice of at least 30 days to IMT and in compliance with Section 7.1.

### ARTICLE III - RENT

Section 3.1 - Rent: IMT shall pay in advance to PORT the sum of \$904.39 per month as rent based on the following:

3.1.1 Basic Rent: IMT shall pay in advance to PORT the sum of \$528.55 per month as rent based on \$9.30 per-square-foot-per-year for the building space (hereinafter "Basic Rent"). Said Basic Rent shall be subject to adjustment in accordance with Section 3.2 of this Lease.

3.1.2 Operating Charge: In addition to Basic Rent, IMT shall pay \$284.17 per month based on \$5.00 per-square-foot-per-year (hereinafter "Operating Charge"). Said Operating Charge shall be subject to adjustment in accordance with Section 3.3 of this Lease.

3.1.3 Additional Rent: IMT shall pay to PORT \$91.67 per month as additional rent (hereinafter "Additional Rent") for improvements the Port will provide to the Premises as described in Section 5.2 herein.

Section 3.2 - Adjustment to Basic Rent: The Basic Rent shall be adjusted based on the increase in the Consumer Price Index (CPI) as provided below, provided that, in no event shall the rental rate be less than the original \$9.30 per-square-foot-year.

3.2.1 For the first and second option Terms, should IMT elect to continue this Lease, the Basic Rent shall be subject to an upward adjustment based on the proportionate increase of the Consumer Price Index - Seasonally Adjusted U.S. City Average for all items for All Urban Consumers (1982-84=100) (hereinafter CPI-U) for the original term of the Lease. The adjustment shall be determined by multiplying the initial Basic Rent by a fraction (that shall not be less than one) the numerator of which is the CPI-U for December 1991 and the denominator of which is the CPI-U for December 1993.

3.2.2 In the event the CPI-U is discontinued, comparable statistics published by a responsible financial periodical or recognized authority selected by PORT shall be used for making the computation.

3.2.3 If the CPI-U base year 1982-84 (or other base year for a substituted index) is changed, the denominator figure used in making the computation in Section 3.2 above shall accordingly be changed so that all increases in the CPI-U from the Base Year are taken into account, notwithstanding any such change in said CPI-U Base Year.



Section 3.3 - Adjustment to Operating Costs: "Fiscal Year" as used herein shall mean July 1 to June 30 of any year throughout the term of this Lease or any extensions thereof. At the beginning of each Fiscal Year during the term of this Lease and any renewal or extension thereof, the Operating Cost shall be adjusted based on IMT's proportionate share, as defined in Section 3.3.1 herein, of any percentage of increase in PORT's operating costs for the Building above those for the base year. The Base Year of this Lease shall be July 1, 1992, to June 30, 1993. As used herein, "Operating Costs" shall mean all costs of operating and maintaining the Building as determined by Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof); all water and sewer charges; the cost of steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses; permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; the annual amortized capital improvement costs (amortized over such a period as the PORT may select and at a current market interest rate), such Operating Expenses to be allocated in accordance with Standard real estate accounting practice. In no event shall any decrease in operating costs reduce the Basic Rent.

3.3.1 IMT's "Proportionate Share" as used herein shall mean the square footage area of the Premise leased to IMT, divided by the total leasable square footage area of the Building of which the premises is a part. IMT's proportional Share on the commencement date of this Lease shall be 12.28 percent.

Section 3.4 - Security Deposit: In addition to payments of Basic Rent, IMT has on deposit with PORT the sum of \$904.39 as security for IMT's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest to the account of IMT and shall not be considered an advance payment of rent or a measure of PORT's damages in the event of default by IMT. If IMT defaults in the performance of any of its obligations under this Lease, including without limitation the payment of Basic Rent, PORT may, but shall not be obligated to, use, apply, or retain all or part of the security deposit to the extent required for the payment of any amount in default or any amount which PORT may expend or incur by reason of IMT's default. If PORT so uses, applies, or retains all or part of the security deposit, IMT shall, upon demand, immediately deposit with PORT an amount equal to the amount so used, applied, or retained. If IMT fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to IMT within 30 days after the expiration of this Lease and delivery to PORT of possession of the Premises and all payments required to be made by IMT hereunder. In the event of any sale of PORT's interest in the Premises, PORT shall have the right to transfer the security deposit to the purchaser thereof and PORT shall thereupon be released by IMT from all liability for refund of the security deposit.

Section 3.5 - Time and Place of Payments:

3.5.1 Monthly rental payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the

month being prorated.

3.5.2 Payment shall be to PORT at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as PORT may designate. All amounts not paid by IMT when due shall bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect PORT's then current rate charged on overdue accounts.

Section 3.6 - Acceptance of Late Rent: PORT shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event PORT elects to accept a tender of payment of Basic Rent after the time when such payment is due, PORT may do so without thereby waiving any default based upon the failure of IMT to make such payment when due and without waiving IMT's continuing obligation to make such payments when required under the terms of this Lease. IMT hereby acknowledges that this constitutes a waiver by IMT of any argument that by accepting a late payment of Basic Rent, PORT has waived any default which is based upon such late payment or has waived IMT's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV - IMT'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: IMT shall make no construction, alteration, or changes on or to the Premises without the prior written consent of PORT. At least thirty days prior to any approved construction, alteration, or changes upon



the Premises or Improvements, PORT may require architectural and mechanical final plans and specifications, and/or architectural renderings, and shall not commence any construction until it has received PORT's written approval. Should PORT fail to take action concerning plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until IMT has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to IMT's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, PORT may require IMT to deliver to PORT complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed by the State of Oregon.

Section 4.2 - Conduct of Business: IMT agrees to continuously during the Lease Term conduct and carry on its business on the Premises and shall keep such Premises and Improvements upon for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond IMT's reasonable control.

Section 4.3 - Maintenance: Except for PORT maintenance responsibilities provide in Section 5.1 herein, IMT shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by IMT or PORT in good and substantial repair and condition, and shall promptly make all necessary repair and alterations thereto at IMT's sole expense. Such repairs shall be in accordance with Section 4.1 herein. IMT shall provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at IMT's expense, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.4 - Taxes: PORT, on behalf of IMT, shall pay all real property taxes applicable to the Premises. If the term of the Lease or any extension thereof shall end after June 30 of any year, or if IMT shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and as such IMT shall occupy the Premises on July 1 of any year, IMT shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.1 As used herein, the term "real property tax" shall not include business

license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, federal government, or any special district or agency. Such taxes shall remain the responsibility of IMT.

4.4.2 IMT shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and personal property contained in the Premises or elsewhere. When possible, IMT shall cause said trade fixtures, furnishings, equipment, and personal property to be assessed and billed separately from the real property of PORT. If any of IMT's said personal property shall be assessed with PORT's real property, IMT shall pay PORT the taxes attributable to IMT within 10 days after receipt of a written statement setting forth the taxes applicable to IMT's property.

Section 4.5 - Liens: IMT agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with IMT's consent to be furnished to or for IMT in, upon, or about the Premises or Improvements, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or PORT's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that IMT may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that PORT may require IMT to procure a payment bond in the amount of the contested lien.



Section 4.6 - Utilities: IMT shall promptly pay any charges for telephone and all other charges for utilities that may be furnished to the Premises at the request of or for the benefit of IMT, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by PORT.

4.6.1 IMT shall not, without PORT's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, facsimile or telecopier machine shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to PORT. In no event shall IMT overload the electrical circuits from which IMT obtains current.

Section 4.7 - Advertisement Signs: Subject to the provisions hereof, IMT shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by IMT. IMT shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without first having obtained PORT's written consent thereto, which shall not be unreasonably withheld, provided that PORT may condition the installation as to size, construction, location, and general appearance.

Section 4.8 - Safety Requirements:

4.8.1 IMT shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. IMT shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for IMT in any way connected with the conduct of IMT pursuant to this Lease.

4.8.2 IMT shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. PORT shall maintain the existing fire suppression sprinkler system in the building.

Section 4.9 - Access to Premises: Except as provided in Section 4.9.1, PORT shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by IMT of its obligations under this Lease; (3) doing any other act which PORT may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.9.1.

4.9.1 Environmental Inspection: PORT reserves the right to inspect IMT's management of Hazardous Substances on the Premises, as defined in Section 6.2, at any time

and from time to time without notice to IMT. If PORT at any time during the term of this Lease or any extension thereof has reason to believe that IMT is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, PORT may require IMT to furnish to PORT, at IMT's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to PORT. In the event PORT determines that contamination is reasonably likely to occur, PORT may require only such protective measures as are reasonably required to prevent contamination.

Section 4.10 - Hazardous Substances, Spills and Releases:

4.10.1 IMT shall immediately notify PORT upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to IMT or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.10.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, IMT shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous



Substance is eliminated. PORT shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, IMT shall provide PORT with a certificate acceptable to PORT that all such contamination has been eliminated as required by federal, state, or local law or regulations.

#### ARTICLE V - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Port Maintenance Obligations: PORT shall maintain the exterior walls, roof, the common areas, and the HVAC system of the Building, the landscaping immediately surrounding the Building, and provide janitorial service for the common areas.

Section 5.2 - Improvements: PORT shall make the following improvements: Install interior demising walls to create two additional offices; install doors to the interior offices; and adjust lights, switches, electrical outlets and HVAC as needed.

Section 5.3 - Delivery of Premises: IMT shall have the right to possession of the Premises upon substantial completion of the Improvements. Should PORT be unable to deliver possession of the Premises within sixty days following the date of this Lease Agreement, then IMT may elect to cancel this Lease by notice to PORT within ten days following expiration of the sixty-day period. PORT shall have no liability to IMT for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

Section 5.4 - Port's Warranty of Ownership: PORT warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to IMT performing all obligations of this Lease, IMT's possession of the Premises will not be disturbed by PORT or anyone lawfully claiming by, through or under PORT, and PORT will defend IMT's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under PORT.

Section 5.5 - Condition of Premises: PORT makes no warranties or representations regarding the condition of the Premises. IMT has inspected and accepts the Premises in an "as is" condition upon taking possession, and PORT shall have no liability to IMT for any damage or injury caused by the condition of Premises, provided that PORT shall be responsible for removing or correcting any environmental contamination on the Premises existing prior to the date of this Lease.

#### ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION

Section 6.1 - General Indemnity:

6.1.1 IMT shall indemnify, save and hold harmless, and defend PORT, its commissioners, directors, officers, and employees from and against all claims, actions, and expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of IMT or its employees in the use or occupancy of the Premises; provided that

PORT shall give to IMT prompt and reasonable notice of any such claims or actions, and IMT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of PORT.

6.1.2 PORT, to the extent permitted by law, shall indemnify, save and hold harmless, and defend IMT, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that IMT shall give to PORT prompt and reasonable notice of any such claims or actions, and PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of IMT.

Section 6.2 - Hazardous Materials Indemnity: In addition to the indemnity provided in Section 6.1 above, IMT agrees to indemnify, save and hold harmless, and defend PORT from and against all removal, remediation, containment, and other costs caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials, contaminants, or regulated substances (collectively "Hazardous Substances"), as those terms are defined by federal, state, or local environmental law or regulation, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Comprehensive



Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986) as amended; the Toxic Substance Control Act (15 U.S.C. 2601, et. seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.) as amended by the Hazardous and Solid Waste Amendments Act of 1984; the Clean Water Act (33 U.S.C. §1251, et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); 1985 Oregon Laws Chapter 733; 1987 Oregon Laws Chapter 540, as the same may be amended from time to time (collectively "Environmental Law"), which Hazardous Substances are on the Premises as a result of IMT's acts or omission. Such Costs shall include, but not be limited to: (a) claims of third parties, including governmental agencies, for damages, response costs, indemnities or other relief; (b) the cost, expense or loss to PORT of any injunctive relief, including preliminary or temporary injunctive relief, applicable to PORT or the Premises; (c) the expense, including fees of attorneys, engineers, paralegals and experts, reporting the existence of said Hazardous Substances or contaminants to any agency of the State of Oregon or the United States as required by applicable laws or regulations; (d) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by IMT promptly after PORT incurs the obligation to pay such amounts. Such damages, costs, liabilities and expenses shall include such as are claimed to be owed by any regulating and administering agency. As used

in Article VI, the word "Premises" shall be deemed to include the soil and water table thereof.

6.2.1 Promptly upon written notice from PORT or from any governmental entity, IMT shall remove from the Premises (including without limitation the soil or water table thereof) all Hazardous Substances, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations.

Section 6.3 - Duty to Defend: IMT shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Section 6.1 which may be brought against PORT or in which PORT may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against PORT in any such action or proceeding.

Section 6.4 - Insurance:

6.4.1 IMT shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of \$5,000,000 and automobile liability insurance with a minimum combined single limit of \$1,000,000 for the protection of IMT and PORT, its commissioners, directors, officers, servants, and employees, insuring IMT and PORT against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of IMT on or

from the Premises. IMT shall also maintain fire legal liability insurance for the duration of this Lease. IMT shall maintain business interruption insurance equal to its fixed financial obligations, including rental payments to PORT for a period of six months. The amount of this coverage will be reevaluated with PORT on a yearly basis. The proceeds of any business interruption insurance shall be used first to continue payments to PORT.

6.4.2 IMT shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability.

6.4.3 All insurance policies shall name PORT, its commissioners, officers, agents, and employees as additional insureds. The policies shall further provide that the underwriter(s) or provider(s) is obligated to give PORT at least thirty days written notice before such policies may be revised, non-renewed or cancelled.

6.4.4 IMT shall furnish PORT with certificates of insurance evidencing the date, amount, and type of insurance or self-insurance that has been procured pursuant to this Lease.

6.4.5 PORT shall have the right to review the limits and coverage of insurance required herein from time to time. In the event PORT determines that such limits and/or coverage should be modified, PORT will provide notice to IMT of such determination and IMT shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide PORT with an updated certificate.

Section 6.5 - Waiver of Subrogation: PORT and IMT agree that each forfeits any right of action that it may later acquire against the other to the Lease for loss or damage to its



property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of IMT's property damage policy or policies.

Section 6.6 - Damage or Destruction of Premises: If the Premises or Improvements are totally or partially destroyed by fire or any other cause, PORT shall have the option and shall within 60 days from the damage or destruction, notify IMT in writing whether or not PORT elects to repair, rebuild, restore the Premises or to terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice. PORT shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that IMT shall be entitled to the insurance proceeds from its own insurance for damage done to IMT's personal property within the Premises.

#### ARTICLE VII - TERMINATION

Section 7.1 - Termination by PORT: PORT shall be entitled to terminate this Lease as provided in Section 8.1 and as may otherwise be provided by law.

Section 7.2 - Termination by IMT: IMT shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, IMT shall deliver all keys to PORT and surrender the Premises and Improvements in good condition. Alterations constructed by IMT with permission from PORT shall not be removed

but shall be restored to the original condition, unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which IMT is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, PORT shall have the option to either require removal of all Improvements within ninety days after the expiration of the Lease at IMT's expense or shall have the option to take title to such structures, installations, and improvements. Any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than IMT's trade fixtures, shall, at PORT's option, become the property of PORT. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of IMT if placed on the Premises by IMT. At or before the termination of this Lease, IMT, at its expense, shall remove from the Premises any and all of IMT's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of IMT's property which remain on the Premises after the termination of this Lease in violation of this Section 7.4 may, at the option of PORT, be deemed abandoned. PORT shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to IMT therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of

expenditure at PORT's then current interest rate, from IMT upon demand.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than IMT's trade fixtures, shall, at PORT's option, become the property of PORT. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of IMT if placed on the Premises by IMT. At or before the termination of this Lease, IMT, at its expense, shall remove from the Premises any and all of IMT's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of IMT's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of PORT, be deemed abandoned. PORT shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to IMT therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at PORT's then current interest rate, from IMT upon demand.

7.5.2 If PORT so elects, IMT shall remove any or all fixtures which would otherwise remain the property of PORT, and shall repair any physical damage resulting from the removal. If IMT fails to remove such fixtures, PORT may do so and charge the cost to IMT with interest at 10 percent per annum from the date of expenditure. IMT shall remove



all furnishings, furniture and trade fixtures which remain the property of IMT. If IMT fails to do so, this shall be an abandonment of the property, and PORT may retain the property and all rights of IMT with respect to it shall cease or, by notice in writing given to IMT within twenty days after removal was required, PORT may elect to hold IMT to his obligation of removal. If PORT elects to require IMT to remove, PORT may effect a removal and place the property in public storage for IMT's account. IMT shall be liable to PORT for the cost of removal, transportation to storage, and storage, with interest at PORT's then current on all such expenses from the date of expenditure by PORT.

7.5.3 The time for removal of any property or fixtures which IMT is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within thirty days after notice from PORT requiring such removal where the property to be removed is a fixture which IMT is not required to remove except after such notice by PORT, and such date would fall after the date on which IMT would be required to remove other property.

Section 7.6 - Holding Over: If IMT shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with PORT upon the terms and provisions of a new lease prior to such expiration, at PORT's discretion, IMT shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event PORT deems IMT as a month-to-month holdover tenant, IMT shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from

month to month subject to the payment of all rent in advance, the monthly rent to continue as originally established; (2) title to Improvements shall have vested in PORT pursuant to Section 7.4 hereof; (3) PORT shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to IMT; and (4) such month-to-month tenancy may be terminated at any time by written notice from PORT to IMT. In the event PORT deems IMT as a tenant at sufferance, PORT shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if IMT is in possession of Premises on July 1 of any year, IMT shall be responsible for payment of property taxes for the entire tax year without proration.

#### ARTICLE VIII - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of IMT to pay any rent or other charge as provided herein within ten days after it is due. IMT's liability to PORT for default shall survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of IMT to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by PORT specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day period, this provision shall be complied with if IMT begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of IMT; an assignment by IMT for the benefit of creditors; the filing by IMT of a voluntary petition in bankruptcy; an adjudication that IMT is bankrupt or the appointment of a receiver of the properties of IMT and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of IMT to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of IMT to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of IMT for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Sections 8.1, PORT at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by PORT, from time to time, at PORT's election, and nothing in this Lease will be deemed to require PORT to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in



equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by PORT of any such rights or remedies will not preclude the simultaneous or later exercise by PORT of any other such rights or remedies. All such rights and remedies are nonexclusive.

## ARTICLE IX - GENERAL PROVISIONS

### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to PORT and IMT. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of PORT. Any assignment or attempted assignment without PORT's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If IMT is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment PORT may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. PORT may require increased rental to compensate for additional value prior to consent.

Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

Section 9.3 - Adherence to Law: IMT shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; and (3) all federal, state, regional and local environmental laws.

9.3.1 IMT shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. IMT shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 IMT shall promptly provide to PORT copies of all notices or other communications between IMT and any governmental entity which relate to IMT's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or

quasi-governmental body having jurisdiction over IMT's use of the Premises.

9.3.3 IMT shall obtain, and promptly advise PORT of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that IMT may undertake on the Premises. IMT shall provide PORT with copies of all such approvals and permits received by IMT.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - No Benefit to Third Parties: PORT and IMT are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.6 - Consent of Port:

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by PORT is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the Executive Director of PORT of Portland.

9.6.2 If IMT requests PORT's consent or approval pursuant to any provision



of the Lease and PORT fails or refuses to give such consent, IMT shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended IMT's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which PORT has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.7 - Vacation: Upon vacation or abandonment of the Premises by IMT prior to the expiration of the Lease Term without written consent of PORT, PORT may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release IMT from the obligations herein, but IMT shall nevertheless remain liable and continue to be bound, unless PORT, at PORT's election, shall cancel the Lease. Cancellation shall be effected and PORT and IMT released from all obligations under this Lease, upon the mailing of such notice of cancellation by PORT to IMT at IMT's last known address, provided that IMT shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in PORT.

Section 9.8 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to PORT at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to IMT at

IMT Agencies, 1999 Harrison St., Suite 930, Oakland, CA 94111. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.9 - Time of the Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.10 - Survival: All covenants and conditions (including but not limited to indemnification agreements), set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.11 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.12 - No Light or Air Easement: The reduction or elimination of IMT's light, air, or view will not affect IMT's liability under this Lease, nor will it create any

liability of PORT to IMT.

Section 9.13 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.14 - Rules and Regulations: PORT may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of the Premises and contiguous property owned by PORT, which IMT agrees to observe and obey.

Section 9.15 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto. All modifications shall be filed with the FMC and shall be effective on the day approved by the FMC.

Section 9.16 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.17 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.



Section 9.18 - Absence of Brokers: IMT and PORT each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

Section 9.19 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by IMT that PORT and PORT's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by IMT against PORT for, and PORT shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with PORT being expressly waived by IMT.

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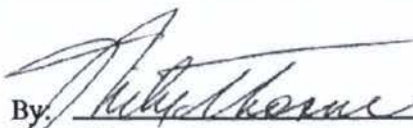
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IN WITNESS HEREOF, the parties have subscribed their names hereto this 12<sup>th</sup>  
day of March 1992.

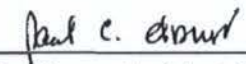
IMT Agencies

By:   
Frank D. Troxel, President

PORT OF PORTLAND

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By:   
Paul C. Elsner, Assistant General Counsel  
for the Port of Portland

APPROVED BY COMMISSION ON:

3-11-92

92-050

**LEASE AGREEMENT  
BETWEEN  
INTEROCEAN STEAMSHIP CORPORATION  
AND  
THE PORT OF PORTLAND**



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## LEASE

THIS LEASE dated this 6<sup>th</sup> day of May, 1992, is entered into by and between INTEROCEAN STEAMSHIP CORPORATION, a corporation duly organized under the laws of the State of \_\_\_\_\_ (hereinafter referred to as Interocean), and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as Port).

## RECITALS

WHEREAS, Port desires to lease certain office space located in the Terminal 2 Administration Building to Interocean, said office space being more particularly described below; and

WHEREAS, Interocean is desirous of leasing said office space;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

Section 1.1 - Description of Premises: Port leases to Interocean, and Interocean leases from Port, on the terms and conditions stated below, approximately 583 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. \_\_\_\_\_, attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon and appurtenances thereto (hereinafter referred to as Premises). Upon construction or installation



of any improvements, additions, or changes to improvements in, under, or upon the Premises (each an "Improvement" and collectively the "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises: Interocean may use the Premises only for the following purposes: office space.

1.2.1 No other use may be made of the Premises without the written approval of Port. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

1.2.2 Interocean shall not use or permit in or on the Premises anything that shall increase the rate of fire insurance thereon or prevent Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any illegal purposes, and that Interocean shall comply at Interocean's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of

said Premises.

Section 1.3 - Appurtenant Rights: Interocean shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of Port to exercise its governmental powers over the Common Areas, as defined herein.

1.3.1 Interocean, its customers, agents, representatives, and invitees shall have the nonexclusive right to use the Common Areas, such right to be in common with others to whom Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by Port within Terminal 2 where such areas have been designated by Port as areas to be used by the business invitees, by tenants in common with other tenants, or by general public in common with tenants.

1.3.2 Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom Port may grant or may have granted such rights in such manner as Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make

repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size;

1.3.2.5 To exercise any of Port's governmental powers over the Common Areas; and

1.3.2.6 To transfer ownership of such Common Areas.

## ARTICLE II - TERM

Section 2.1 - Term: The term of this Lease shall commence on May 1, 1992, and shall continue through and including December 31, 1992, unless the Lease is earlier terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from May 1 through April 30.

Section 2.2 - Taxability of Port Bonds: This Lease shall be subject to terms so as not to affect the taxability of the General Obligation Bonds issued by Port to finance the Premises. It is a material condition of this Lease that bond counsel, of Port's choosing, be able to issue an opinion that interest earned by holders of Port of Portland Terminal 2 Reconstruction General Obligation Bonds will not be caused by this Lease to be included in such holder's Gross Income as defined by Internal Revenue Code Section 61 and as it may be amended. The parties shall negotiate any modifications of this Lease to insure that its terms



will permit Port to obtain any necessary legal opinion, but only if such terms are also mutually agreeable to both Port and Interocean. In the event that the parties cannot agree upon the terms necessary to obtain legal opinion, Port may terminate this Lease upon written notice of at least 30 days to Interocean and in compliance with Section 7.1.

### ARTICLE III - RENT

Section 3.1 - Rent: Interocean shall pay in advance to Port the sum of \$400 per month as rent.

Section 3.2 - Security Deposit: In addition to payments of Basic Rent, Interocean has on deposit with Port the sum of \$400 as security for Interocean's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest to the account of Interocean and shall not be considered an advance payment of rent or a measure of Port's damages in the event of default by Interocean. If Interocean defaults in the performance of any of its obligations under this Lease, including without limitation the payment of Basic Rent, Port may, but shall not be obligated to, use, apply, or retain all or part of the security deposit to the extent required for the payment of any amount in default or any amount which Port may expend or incur by reason of Interocean's default. If Port so uses, applies, or retains all or part of the security deposit, Interocean shall, upon demand, immediately deposit with Port an amount equal to the amount so used, applied, or retained. If Interocean fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to Interocean within

30 days after the expiration of this Lease and delivery to Port of possession of the Premises and all payments required to be made by Interocean hereunder. In the event of any sale of Port's interest in the Premises, Port shall have the right to transfer the security deposit to the purchaser thereof and Port shall thereupon be released by Interocean from all liability for refund of the security deposit.

Section 3.3 - Time and Place of Payments:

3.3.1 Monthly rental payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the month being prorated.

3.3.2 Payment shall be to Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as Port may designate. All amounts not paid by Interocean when due shall bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect Port's then current rate charged on overdue accounts.

Section 3.4 - Acceptance of Late Rent: Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event Port elects to accept a tender of payment of Basic Rent after the time when such payment is due, Port may do so without thereby waiving any default based upon the failure of Interocean to make such payment when due and without waiving Interocean's

continuing obligation to make such payments when required under the terms of this Lease. Interocean hereby acknowledges that this constitutes a waiver by Interocean of any argument that by accepting a late payment of Basic Rent, Port has waived any default which is based upon such late payment or has waived Interocean's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV - INTEROCEAN'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: Interocean shall make no construction, alteration, or changes on or to the Premises without the prior written consent of Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, Port may require architectural and mechanical final plans and specifications, and/or architectural renderings, and shall not commence any construction until it has received Port's written approval. Should Port fail to take action concerning plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Interocean has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Interocean's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing



Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Port may require Interocean to deliver to Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed by the State of Oregon.

Section 4.2 - Conduct of Business: Interocean agrees to continuously during the Lease Term conduct and carry on its business on the Premises and shall keep such Premises and Improvements open for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond Interocean's reasonable control.

Section 4.3 - Maintenance: Except for Port maintenance responsibilities provide in Section 5.1 herein, Interocean shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by Interocean or Port in good and substantial repair and condition, and shall promptly make all necessary repairs and alterations thereto at Interocean's sole expense. Such repairs shall be in accordance with Section 4.1 herein. Interocean shall provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at Interocean's expense, and shall keep the Premises free

and clear of rubbish, debris, and litter at all times.

Section 4.4 - Taxes: Port, on behalf of Interocean, shall pay all real property taxes applicable to the Premises. If Interocean shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and as such Interocean shall occupy the Premises on July 1 of any year, Interocean shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.1 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, federal government, or any special district or agency. Such taxes shall remain the responsibility of Interocean.

4.4.2 Interocean shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and personal property contained in the Premises or elsewhere. When possible, Interocean shall cause said trade fixtures, furnishings, equipment, and personal property to be assessed and billed separately from the real property of Port. If any of Interocean's said personal property shall be assessed with Port's real property, Interocean shall pay Port the taxes attributable to Interocean within 10 days after receipt of a written statement setting forth the taxes applicable to Interocean's property.

Section 4.5 - Liens: Interocean agrees to pay, when due, all sums of money that may

become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Interocean's consent to be furnished to or for Interocean in, upon, or about the Premises or Improvements, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that Interocean may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that Port may require Interocean to procure a payment bond in the amount of the contested lien.

Section 4.6 - Utilities: Interocean shall promptly pay any charges for telephone and all other charges for utilities that may be furnished to the Premises at the request of or for the benefit of Interocean, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by Port.

4.6.1 Interocean shall not, without Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, facsimile or telecopier machine shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to Port. In no event shall Interocean overload the electrical



circuits from which Interocean obtains current.

Section 4.7 - Advertisement Signs: Subject to the provisions hereof, Interocean shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by Interocean. Interocean shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without first having obtained Port's written consent thereto, which shall not be unreasonably withheld, provided that Port may condition the installation as to size, construction, location, and general appearance.

Section 4.8 - Safety Requirements:

4.8.1 Interocean shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Interocean shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Interocean in any way connected with the conduct of Interocean pursuant to this Lease.

4.8.2 Interocean shall exercise due and reasonable care and caution to prevent and control fire on the Premises.

Section 4.9 - Access to Premises: Except as provided in Section 4.9.1, Port shall at all times during ordinary business hours have the right to enter upon the Premises for the

purposes of: (1) inspecting the same; (2) confirming the performance by Interocean of its obligations under this Lease; (3) doing any other act which Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.9.1.

4.9.1 Environmental Inspection: Port reserves the right to inspect Interocean's management of Hazardous Substances on the Premises, as defined in Section 6.2, at any time and from time to time without notice to Interocean. If Port at any time during the term of this Lease or any extension thereof has reason to believe that Interocean is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, Port may require Interocean to furnish to Port, at Interocean's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to Port. In the event Port determines that contamination is reasonably likely to occur, Port may require only such protective measures as are reasonably required to prevent contamination.

Section 4.10 - Hazardous Substances, Spills and Releases:

4.10.1 Interocean shall immediately notify Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to Interocean or any other person relating to such Hazardous Substances on, under,

or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.10.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Interocean shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, Interocean shall provide Port with a certificate acceptable to Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

#### ARTICLE V - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Port Maintenance Obligations: Port shall maintain the exterior walls, roof, the common areas, and the HVAC system of the Building, the landscaping immediately surrounding the Building, and provide janitorial service for the common areas.

Section 5.2 - Port's Warranty of Ownership: Port warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to Interocean performing all obligations of this Lease, Interocean's possession of the Premises will not be disturbed by Port or anyone lawfully claiming by, through or under Port, and Port



will defend Interocean's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under Port.

Section 5.3 - Condition of Premises: Port makes no warranties or representations regarding the condition of the Premises. Interocean has inspected and accepts the Premises in an "as is" condition upon taking possession, and Port shall have no liability to Interocean for any damage or injury caused by the condition of Premises, provided that Port shall be responsible for removing or correcting any environmental contamination on the Premises existing prior to the date of this Lease. Interocean understands that Port is working to resolve a problem with the HVAC system, and as such, the system will not be completely functional at the start of the Lease. Port agrees to resolve the problem with all due speed.

#### ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION

##### Section 6.1 - General Indemnity:

6.1.1 Interocean shall indemnify, save and hold harmless, and defend Port, its commissioners, directors, officers, and employees from and against all claims, actions, and expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of Interocean or its employees in the use or occupancy of the Premises; provided that Port shall give to Interocean prompt and reasonable notice of any such claims or actions, and Interocean shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the

negligence of Port.

6.1.2 Port, to the extent permitted by law, shall indemnify, save and hold harmless, and defend Interocean, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of Port, its employees, contractors, or agents in the use or maintenance of the Premises; provided that Interocean shall give to Port prompt and reasonable notice of any such claims or actions, and Port shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of Interocean.

Section 6.2 - Hazardous Materials Indemnity: In addition to the indemnity provided in Section 6.1 above, Interocean agrees to indemnify, hold harmless, and defend the Port from and against all costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below), which costs arise out of, or are in connection with, the actual or alleged use, generation, treatment, handling, storage, discharge, transportation, or disposal of Hazardous Substances (as defined below), including any actual or alleged spill, leak or release.

6.2.1 Costs: Costs shall include, but not be limited to: (a) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary

injunctive relief, applicable to the Port or the Premises; (c) all expenses of evaluation, testing, and analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (e) any and all expenses or obligations, including attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone charges and other expenses; and (f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

6.2.2 Environmental Laws: Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Federal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); the Clean Water Act (33 U.S.C. §1251, et. seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.); the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); the Comprehensive Environmental Response,



Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Safe Drinking Water Act (44 U.S.C. §3330 et seq.); the Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

6.2.3 Hazardous Substances: Hazardous Substances shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants which are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

6.2.4 Promptly upon written notice from the Port or from any governmental

entity, Interocean shall remove from the Premises, at its own cost and expense, all Hazardous Substances, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Interocean promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies Interocean.

Section 6.3 - Duty to Defend: Interocean shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Section 6.1 which may be brought against Port or in which Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against Port in any such action or proceeding.

Section 6.4 - Insurance:

6.4.1 Interocean shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of <sup>4,000,000</sup> ~~\$5,000,000~~ and automobile liability insurance with a minimum combined single limit of ~~\$1,000,000~~ for the protection of Interocean and Port, its commissioners, directors, officers, agents, and employees, insuring Interocean and Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Interocean on or from the Premises. Interocean shall also maintain fire legal liability



insurance for the duration of this Lease. ~~Interocean shall maintain business interruption insurance equal to its fixed financial obligations, including rental payments to Port for a period of six months. The amount of this coverage will be reevaluated with Port on a yearly basis. The proceeds of any business interruption insurance shall be used first to continue payments to Port.~~

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INITIAL  
[Signature]

6.4.2 Interocean shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability.

6.4.3 All insurance policies shall name Port, its commissioners, officers, agents, and employees as additional insureds. The policies shall further provide that the underwriter(s) or provider(s) is obligated to give Port at least thirty days written notice before such policies may be revised, non-renewed or cancelled.

6.4.4 Interocean shall furnish Port with certificates of insurance evidencing the date, amount, and type of insurance or self-insurance that has been procured pursuant to this Lease.

6.4.5 Port shall have the right to review the limits and coverage of insurance required herein from time to time. In the event Port determines that such limits and/or coverage should be modified, Port will provide notice to Interocean of such determination and Interocean shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide Port with an updated certificate.

Section 6.5 - Waiver of Subrogation: Port and Interocean agree that each forfeits any right of action that it may later acquire against the other to the Lease for loss or damage to its



property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of Interocean's property damage policy or policies.

Section 6.6 - Damage or Destruction of Premises: If the Premises or Improvements are totally or partially destroyed by fire or any other cause, Port shall have the option and shall within 60 days from the damage or destruction, notify Interocean in writing whether or not Port elects to repair, rebuild, restore the Premises or to terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice. Port shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that Interocean shall be entitled to the insurance proceeds from its own insurance for damage done to Interocean's personal property within the Premises.

#### ARTICLE VII - TERMINATION

Section 7.1 - Termination by Port: Port shall be entitled to terminate this Lease as provided in Section 8.1 and as may otherwise be provided by law.

Section 7.2 - Termination by Interocean: Interocean shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, Interocean shall deliver all keys to Port and surrender the Premises and Improvements in

good condition. Alterations constructed by Interocean with permission from Port shall not be removed but shall be restored to the original condition, unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Interocean is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, Port shall have the option to either require removal of all Improvements within ninety days after the expiration of the Lease at Interocean's expense or shall have the option to take title to such structures, installations, and improvements. Any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than Interocean's trade fixtures, shall, at Port's option, become the property of Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of Interocean if placed on the Premises by Interocean. At or before the termination of this Lease, Interocean, at its expense, shall remove from the Premises any and all of Interocean's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Interocean's property which remain on the Premises after the termination of this Lease in violation of this Section 7.4 may, at the option of Port, be deemed abandoned. Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Interocean therefor, or

(b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at Port's then current interest rate, from Interocean upon demand.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than Interocean's trade fixtures, shall, at Port's option, become the property of Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of Interocean if placed on the Premises by Interocean. At or before the termination of this Lease, Interocean, at its expense, shall remove from the Premises any and all of Interocean's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Interocean's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of Port, be deemed abandoned. Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Interocean therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at Port's then current interest rate, from Interocean upon demand.

7.5.2 If Port so elects, Interocean shall remove any or all fixtures which would otherwise remain the property of Port, and shall repair any physical damage resulting



from the removal. If Interocean fails to remove such fixtures, Port may do so and charge the cost to Interocean with interest at 10 percent per annum from the date of expenditure.

Interocean shall remove all furnishings, furniture and trade fixtures which remain the property of Interocean. If Interocean fails to do so, this shall be an abandonment of the property, and Port may retain the property and all rights of Interocean with respect to it shall cease or, by notice in writing given to Interocean within twenty days after removal was required, Port may elect to hold Interocean to his obligation of removal. If Port elects to require Interocean to remove, Port may effect a removal and place the property in public storage for Interocean's account. Interocean shall be liable to Port for the cost of removal, transportation to storage, and storage, with interest at Port's then current on all such expenses from the date of expenditure by Port.

7.5.3 The time for removal of any property or fixtures which Interocean is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within thirty days after notice from Port requiring such removal where the property to be removed is a fixture which Interocean is not required to remove except after such notice by Port, and such date would fall after the date on which Interocean would be required to remove other property.

Section 7.6 - Holding Over: If Interocean shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with Port upon the terms and provisions of a new lease prior to such expiration, at Port's

discretion, Interocean shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event Port deems Interocean as a month-to-month holdover tenant, Interocean shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance; (2) title to Improvements shall have vested in Port pursuant to Section 7.4 hereof; (3) the monthly rent to continue as originally established except Port shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to Interocean; and (4) such month-to-month tenancy may be terminated at any time by written notice from Port to Interocean. In the event Port deems Interocean as a tenant at sufferance, Port shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if Interocean is in possession of Premises on July 1 of any year, Interocean shall be responsible for payment of property taxes for the entire tax year without proration.

#### ARTICLE VIII - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of Interocean to pay any rent or other charge as provided herein within ten days after it is due. Interocean's liability to Port for default shall survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of Interocean to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be

completely remedied within the thirty-day period, this provision shall be complied with if Interocean begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of Interocean; an assignment by Interocean for the benefit of creditors; the filing by Interocean of a voluntary petition in bankruptcy; an adjudication that Interocean is bankrupt or the appointment of a receiver of the properties of Interocean and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of Interocean to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of Interocean to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of Interocean for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

#### Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Sections 8.1, Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by Port, from time to time, at



Port's election, and nothing in this Lease will be deemed to require Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Port of any such rights or remedies will not preclude the simultaneous or later exercise by Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### ARTICLE IX - GENERAL PROVISIONS

##### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to Port and Interocean. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of Port. Any assignment or attempted assignment without Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If Interocean is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. Port may require increased rental to

compensate for additional value prior to consent.

Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

Section 9.3 - Adherence to Law: Interocean shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; and (3) all federal, state, regional and local environmental laws.

9.3.1 Interocean shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Interocean shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 Interocean shall promptly provide to Port copies of all notices or other communications between Interocean and any governmental entity which relate to Interocean's

noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over Interocean's use of the Premises.

9.3.3 Interocean shall obtain, and promptly advise Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Interocean may undertake on the Premises. Interocean shall provide Port with copies of all such approvals and permits received by Interocean.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - No Benefit to Third Parties: Port and Interocean are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.6 - Consent of Port:

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by Port is required under the terms contained herein, all such consent, approval or



direction shall be received in writing from the Executive Director of Port of Portland.

9.6.2 If Interocean requests Port's consent or approval pursuant to any provision of the Lease and Port fails or refuses to give such consent, Interocean shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended Interocean's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which Port has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.7 - Vacation: Upon vacation or abandonment of the Premises by Interocean prior to the expiration of the Lease Term without written consent of Port, Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release Interocean from the obligations herein, but Interocean shall nevertheless remain liable and continue to be bound, unless Port, at Port's election, shall cancel the Lease. Cancellation shall be effected and Port and Interocean released from all obligations under this Lease, upon the mailing of such notice of cancellation by Port to Interocean at Interocean's last known address, provided that Interocean shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in Port.

Section 9.8 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties

hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to Interocean at Interocean Steamship Corporation, 1011 Western Avenue, Suite 920, Seattle, WA 98124. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.9 - Time of the Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.10 - Survival: All covenants and conditions (including but not limited to indemnification agreements), set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.11 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.12 - No Light or Air Easement: The reduction or elimination of

Interocean's light, air, or view will not affect Interocean's liability under this Lease, nor will it create any liability of Port to Interocean.

Section 9.13 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.14 - Rules and Regulations: Port may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of the Premises and contiguous property owned by Port, which Interocean agrees to observe and obey.

Section 9.15 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto. All modifications shall be filed with the FMC and shall be effective on the day approved by the FMC.

Section 9.16 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.17 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in



addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.18 - Absence of Brokers: Interocean and Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

Section 9.19 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by Interocean that Port and Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by Interocean against Port for, and Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with Port being expressly waived by Interocean.

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IN WITNESS HEREOF, the parties have subscribed their names hereto this 6<sup>th</sup>

day of May 1992.

INTEROCEAN STEAMSHIP  
CORPORATION

By: Lisa M. Billings

Lisa Billings  
Pacific Northwest Manager

PORT OF PORTLAND

By: Mike Thorne

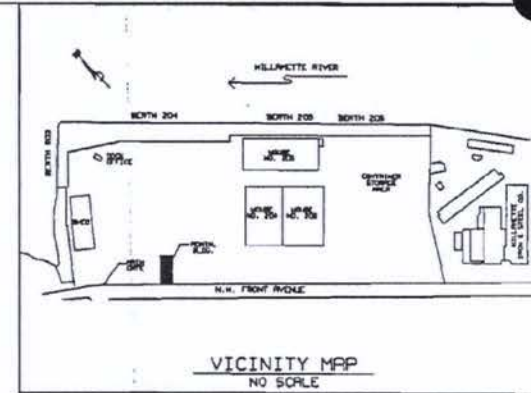
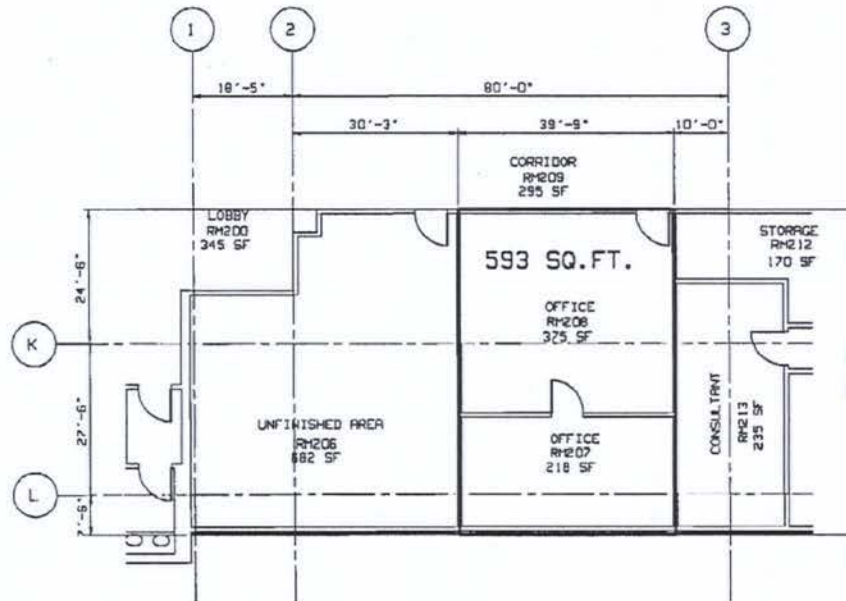
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY.

By: Paul C. Elsner

Paul C. Elsner, Assistant General Counsel  
for the Port of Portland

April 24, 1992  
G:\DOCS\InteroceanLease



SECOND FLOOR  
ADMINISTRATION BUILDING

|                       |  |  |  |              |                                      |  |  |                       |                        |                         |   |  |
|-----------------------|--|--|--|--------------|--------------------------------------|--|--|-----------------------|------------------------|-------------------------|---|--|
|                       |  |  |  |              | PORT OF PORTLAND<br>PORTLAND, OREGON |  |  |                       | DESIGNED BY<br>G. ROSE |                         | TERMINAL 2                                |  |
|                       |  |  |  |              | PROPERTIES DIVISION                  |  |  |                       | DRAWN BY               |                         | LEASE PLAT<br>INTEROCEAN STEAMSHIP, CORP. |  |
|                       |  |  |  |              |                                      |  |  |                       | CHECKED BY             |                         |   |  |
|                       |  |  |  |              |                                      |  |  |                       | DATE<br>FEB., 1991     |                         | SUBMITTED BY<br><i>Donald C. Curren</i>   |  |
| NO. DATE BY REVISIONS |  |  |  | OK'D APP'V'D |                                      |  |  | SCALE<br>1/8" = 1'-0" |                        | DRAWING NO.<br>T2 LP-23 |   |  |



93-006

**LEASE AGREEMENT  
BETWEEN  
STEVEDORING SERVICES OF AMERICA  
AND  
THE PORT OF PORTLAND**

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## LEASE

THIS LEASE dated this 13<sup>th</sup> day of January 1992, is entered into by and between STEVEDORING SERVICES OF AMERICA, INC., a corporation duly organized under the laws of the State of California (hereinafter referred to as Lessee) and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as PORT).

## RECITALS

WHEREAS, Lessee has been leasing certain office space in the Terminal 2 Administration Building since February 8, 1987; and

WHEREAS, LESSEE is desirous of leasing said office space from the Port and the Port is willing to lease said office space to Lessee;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

**Section 1.1 - Description of Premises:** PORT leases to LESSEE, and LESSEE leases from PORT, on the terms and conditions stated below, approximately 2,869 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. T2 90-6 2/2, attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon and appurtenances thereto (hereinafter referred to as Premises). Upon construction or installation of any improvements, additions, or changes to improvements in, under, or upon the Premises (each an "Improvement" and collectively the "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

**Section 1.2 - Use of Premises:** LESSEE may use the Premises only for the following purposes: office space.

1.2.1 No other use may be made of the Premises without the written approval of PORT. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

1.2.2 LESSEE shall not use or permit in or on the Premises anything that shall increase the rate of fire insurance thereon or prevent PORT taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow PORT to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof, or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any illegal purposes, and that LESSEE shall comply at LESSEE's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

**Section 1.3 - Appurtenant Rights:** LESSEE shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of PORT to exercise its governmental powers over the Common Areas, as defined herein.

1.3.1 LESSEE, its customers, agents, representatives, and invitees shall have the nonexclusive right to use the Common Areas, such right to be in common with others to whom PORT has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by PORT within Terminal 2 where such areas have been designated by PORT as areas to be used by the business invitees, by tenants in common with other tenants, or by general public in common with tenants.

1.3.2 PORT reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom PORT may grant or may have granted such rights in such manner as PORT may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size;

1.3.2.5 To exercise any of PORT's governmental powers over the Common Areas; and

1.3.2.6 To transfer ownership of such Common Areas.

## **ARTICLE II - TERM**

**Section 2.1 - Term:** The term of this Lease shall be from February 8, 1993, and shall



continue through February 7, 1998, unless the Lease is earlier terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from February 8 through February 7 of each year.

**Section 2.2 - Renewal Option:** If LESSEE is not in default upon the conclusion of the applicable expiring term, LESSEE shall have one option to renew this Lease for a period of three years on the same terms and conditions except for the establishment of the rent as provided in Section 3.2.4.

### ARTICLE III - RENT

**Section 3.1 - Rent:** LESSEE shall pay in advance to PORT the sum of \$3,418.90 per month as rent based on the following:

3.1.1 **Basic Rent:** LESSEE shall pay in advance to PORT the sum of \$2,223.48 per month as rent based on \$9.30 per-square-foot-per-year for the building space (hereinafter "Basic Rent"). Said Basic Rent shall be subject to adjustment in accordance with Section 3.3 of this Lease.

3.1.2 **Operating Charge:** In addition to Basic Rent, LESSEE shall pay \$1,195.42 per month based on \$5.00 per-square-foot-per-year (hereinafter "Operating Charge"). Said Operating Charge shall be subject to adjustment in accordance with Section 3.4 of this Lease.

**Section 3.2 - Security Deposit:** In addition to payments of Basic Rent, LESSEE has on deposit with PORT the sum of \$2,810.00 as security for LESSEE's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest to the account of LESSEE and shall not be considered an advance payment of rent or a measure of

PORT's damages in the event of default by LESSEE. If LESSEE defaults in the performance of any of its obligations under this Lease, including without limitation the payment of Basic Rent, PORT may use, apply, or retain all or part of the security deposit to the extent required for the payment of any amount in default or any amount which PORT may expend or incur by reason of LESSEE's default. If PORT so uses, applies, or retains all or part of the security deposit, LESSEE shall, upon demand, immediately deposit with PORT an amount equal to the amount so used, applied, or retained. If LESSEE fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to LESSEE within 30 days after the expiration of this Lease and delivery to PORT of possession of the Premises and all payments required to be made by LESSEE hereunder. In the event of any sale of PORT's interest in the Premises, PORT shall have the right to transfer the security deposit to the purchaser thereof and PORT shall thereupon be released by LESSEE from all liability for refund of the security deposit.

**Section 3.3 - Adjustment to Basic Rent:** The Basic Rent shall be adjusted at three year intervals based on the increase in the Consumer Price Index (CPI) as provided below, provided that, in no event shall the rental rate be less than the original \$9.30 per-square-foot-year.

3.3.1 The Basic Rent shall be subject to an upward adjustment based on the proportionate increase of the Consumer Price Index - Seasonally Adjusted U.S. City Average for all items for All Urban Consumers (1982-84=100) (hereinafter CPI-U) for the original term of the Lease. The adjustment shall be determined by multiplying the initial Basic Rent by a fraction (that shall not be less than one) the numerator of which is the CPI-U for December 1992 and the denominator of which is the CPI-U for December immediately preceding the date the increase is to take effect.

3.3.2 In the event the CPI-U is discontinued, comparable statistics published by

a responsible financial periodical or recognized authority selected by PORT shall be used for making the computation.

3.3.3 If the CPI-U base year 1982-84 (or other base year for a substituted index) is changed, the denominator figure used in making the computation in Section 3.3 above shall accordingly be changed so that all increases in the CPI-U from the Base Year are taken into account, notwithstanding any such change in said CPI-U Base Year.

3.3.4 For the option Term, should LESSEE elect to continue this Lease, the Basic Rent shall be based on the market lease value of the building.

**Section 3.4 - Adjustment to Operating Costs:** "Fiscal Year" as used herein shall mean July 1 to June 30 of any year throughout the term of this Lease or any extensions thereof. At the beginning of each Fiscal Year during the term of this Lease and any renewal or extension thereof, the Operating Cost shall be adjusted based on LESSEE's proportionate share, as defined in Section 3.3.1 herein, of any percentage of increase in PORT's operating costs for the Building above those for the base year. The Base Year of this Lease shall be July 1, 1991, to June 30, 1992. As used herein, "Operating Costs" shall mean all costs of operating and maintaining the Building as determined by Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof); all water and sewer charges; the cost of steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses; permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; the annual amortized capital improvement costs (amortized over such a period as the PORT may select and at a current market interest rate), such Operating Expenses to be allocated in accordance with Standard real estate accounting practice. In no event shall any



decrease in operating costs reduce the Basic Rent.

3.4.1 LESSEE's "Proportionate Share" as used herein shall mean the square footage area of the Premise leased to LESSEE, divided by the total leasable square footage area (8,371 square feet) of the Building of which the premises is a part. LESSEE's proportionate Share on the commencement date of this Lease shall be 34 percent.

**Section 3.5 - Time and Place of Payments:**

3.5.1 Monthly rental payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the month being prorated.

3.5.2 Payment shall be to PORT at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as PORT may designate. All amounts not paid by LESSEE when due shall bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect PORT's then current rate charged on overdue accounts.

**Section 3.6 - Acceptance of Late Rent:** PORT shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event PORT elects to accept a tender of payment of Basic Rent after the time when such payment is due, PORT may do so without thereby waiving any default based upon the failure of LESSEE to make such payment when due and without waiving LESSEE's continuing obligation to make such payments when required under the terms of this Lease. LESSEE hereby acknowledges that this constitutes a waiver by LESSEE of any argument that by accepting a late payment of Basic Rent, PORT has waived any default which is based upon such late payment or

has waived LESSEE's continuing obligation to make such payments when and as required by the terms of this Lease.

#### **ARTICLE IV - LESSEE'S OTHER OBLIGATIONS**

**Section 4.1 - Construction of Improvements/Alterations:** LESSEE shall make no construction, alteration, or changes on or to the Premises without the prior written consent of PORT. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, PORT may require architectural and mechanical final plans and specifications, and/or architectural renderings, and shall not commence any construction until it has received PORT's written approval. Should PORT fail to take action concerning plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until LESSEE has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to LESSEE's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, PORT may require LESSEE to deliver to PORT complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed by the State of Oregon.

**Section 4.2 - Conduct of Business:** LESSEE agrees to continuously during the Lease Term conduct and carry on its business on the Premises and shall keep such Premises and Improvements upon for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond LESSEE's reasonable control.

**Section 4.3 - Maintenance:** Except for PORT maintenance responsibilities provide in Section 5.1 herein, LESSEE shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by LESSEE or PORT in good and substantial repair and condition, and shall promptly make all necessary repair and alterations thereto at LESSEE's sole expense. Such repairs shall be in accordance with Section 4.1 herein. LESSEE shall provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at LESSEE's expense, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

**Section 4.4 - Taxes:** PORT, on behalf of LESSEE, shall pay all real property taxes applicable to the Premises. If the term of the Lease or any extension thereof shall end after June 30 of any year, or if LESSEE shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and as such LESSEE shall occupy the Premises on July 1 of any year, LESSEE shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.1 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, federal government, or any special



district or agency. Such taxes shall remain the responsibility of LESSEE.

4.4.2 LESSEE shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and personal property contained in the Premises or elsewhere. When possible, LESSEE shall cause said trade fixtures, furnishings, equipment, and personal property to be assessed and billed separately from the real property of PORT. If any of LESSEE's said personal property shall be assessed with PORT's real property, LESSEE shall pay PORT the taxes attributable to LESSEE within 10 days after receipt of a written statement setting forth the taxes applicable to LESSEE's property.

**Section 4.5 - Liens:** LESSEE agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with LESSEE's consent to be furnished to or for LESSEE in, upon, or about the Premises or Improvements, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or PORT's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that LESSEE may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that PORT may require LESSEE to procure a payment bond in the amount of the contested lien.

**Section 4.6 - Utilities:** LESSEE shall promptly pay any charges for telephone and all other charges for utilities that may be furnished to the Premises at the request of or for the benefit of LESSEE, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by PORT.

4.6.1 LESSEE shall not, without PORT's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, facsimile or telecopier machine shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to PORT. In no event shall LESSEE overload the electrical circuits from which LESSEE obtains current.

**Section 4.7 - Advertisement Signs:** Subject to the provisions hereof, LESSEE shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by LESSEE. LESSEE shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without first having obtained PORT's written consent thereto, which shall not be unreasonably withheld, provided that PORT may condition the installation as to size, construction, location, and general appearance.

**Section 4.8 - Safety Requirements:**

4.8.1 LESSEE shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. LESSEE shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for LESSEE in any way connected with the conduct of LESSEE pursuant to this Lease.

4.8.2 LESSEE shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the



Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. PORT shall maintain the existing fire suppression sprinkler system in the building.

**Section 4.9 - Access to Premises:** Except as provided in Section 4.9.1, PORT shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by LESSEE of its obligations under this Lease; (3) doing any other act which PORT may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.9.1.

4.9.1 Environmental Inspection: PORT reserves the right to inspect LESSEE's management of Hazardous Substances on the Premises, as defined in Section 6.2, at any time and from time to time without notice to LESSEE. If PORT at any time during the term of this Lease or any extension thereof has reason to believe that LESSEE is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, PORT may require LESSEE to furnish to PORT, at LESSEE's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to PORT. In the event PORT determines that contamination is reasonably likely to occur, PORT may require only such protective measures as are reasonably required to prevent contamination.

**Section 4.10 - Hazardous Substances, Spills and Releases:**

4.10.1 LESSEE shall immediately notify PORT upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any



notice or communication from a governmental agency or any other person directed to LESSEE or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.10.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, LESSEE shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. PORT shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, LESSEE shall provide PORT with a certificate acceptable to PORT that all such contamination has been eliminated as required by federal, state, or local law or regulations.

## **ARTICLE V - PORT OBLIGATIONS AND WARRANTIES**

**Section 5.1 - Port Maintenance Obligations:** PORT shall maintain the exterior walls, roof, the common areas, and the HVAC system of the Building, the landscaping immediately surrounding the Building, and provide janitorial service for the common areas.

**Section 5.2 - Port's Warranty of Ownership:** PORT warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to LESSEE performing all obligations of this Lease, LESSEE's possession of the Premises will not be disturbed by PORT or anyone lawfully claiming by, through or under PORT, and PORT will defend LESSEE's right to quiet enjoyment of the Premises from disturbance by anyone lawfully

claiming by, through or under PORT.

**Section 5.3 - Condition of Premises:** PORT makes no warranties or representations regarding the condition of the Premises. LESSEE has inspected and accepts the Premises in an "as is" condition upon taking possession, and PORT shall have no liability to LESSEE for any damage or injury caused by the condition of Premises.

## **ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION**

### **Section 6.1 - General Indemnity:**

6.1.1 LESSEE shall indemnify, save and hold harmless, and defend PORT, its commissioners, directors, officers, and employees from and against all claims, actions, and expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of LESSEE or its employees in the use or occupancy of the Premises; provided that PORT shall give to LESSEE prompt and reasonable notice of any such claims or actions, and LESSEE shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of PORT.

6.1.2 PORT, to the extent permitted by law, shall indemnify, save and hold harmless, and defend LESSEE, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that LESSEE shall give to PORT prompt and reasonable notice of any such claims or actions, and PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim



or claims arising from or caused by the negligence of LESSEE.

**Section 6.2 - Hazardous Materials Indemnity:** In addition to the indemnity provided in Section 6.1 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below), which costs arise out of, or are in connection with, the actual or alleged use, generation, treatment, handling, storage, discharge, transportation, or disposal by Lessee of Hazardous Substances (as defined below) on the Premises, including any actual or alleged spill, leak or release.

6.2.1 **Costs:** Costs shall include, but not be limited to: (a) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (b) the cost, expense or loss to Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to Port or the Premises; (c) all expenses of evaluation, testing, and analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (e) any and all expenses or obligations, including attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone charges and other expenses; and (f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

6.2.2 **Environmental Laws:** Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which



govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Federal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); the Clean Water Act (33 U.S.C. §1251, et. seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.); the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Safe Drinking Water Act (44 U.S.C. §3330 et seq.); the Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Oregon Revised Statutes relating to Community Information on Hazardous Waste Reduction (ORS 453.307 et seq.); Reduction of Use of Toxic Substances and Hazardous Waste Generation (ORS 465.003 et seq.); Removal or Remedial Action (ORS 465.200 et seq.); Notice of Environmental Hazards (ORS 466.360 et seq.); Use of PCBs (ORS 466.505 et seq.); Spill Response and Cleanup of Hazardous Materials (ORS 466.605 et seq.); Underground Storage Tanks (ORS 466.705 et seq.); Civil Penalties (ORS 466.880 et seq.); Ground Water (ORS 468B.150 et seq.); Oil or Hazardous Materials Spillage (ORS 468B.300 et seq.); Asbestos Abatement Projects (ORS 468B.700 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

6.2.3 **Hazardous Substances:** Hazardous Substances shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants which are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, urea formaldehyde, and any other substance that, because of its

quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

6.2.4 Promptly upon written notice from Port or from any governmental entity, Lessee shall remove from the Premises, at its own cost and expense, all Hazardous Substances which are the responsibility of Lessee as determined in Section 6.2, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies Lessee.

**Section 6.3 - Duty to Defend:** LESSEE shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Section 6.1 which may be brought against PORT or in which PORT may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against PORT in any such action or proceeding.

**Section 6.4 - Insurance:**

6.4.1 LESSEE shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of \$5,000,000 and automobile liability insurance with a minimum combined single limit of \$1,000,000 for the protection of LESSEE and PORT, its commissioners, directors, officers, servants, and employees, insuring LESSEE and PORT against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of LESSEE on or from the Premises.



LESSEE shall also maintain fire legal liability insurance for the duration of this Lease.

6.4.2 LESSEE shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability.

6.4.3 All insurance policies shall name PORT, its commissioners, officers, agents, and employees as additional insureds. The policies shall further provide that the underwriter(s) or provider(s) is obligated to give PORT at least thirty days written notice before such policies may be revised, non-renewed or cancelled.

6.4.4 LESSEE shall furnish PORT with certificates of insurance evidencing the date, amount, and type of insurance or self-insurance that has been procured pursuant to this Lease.

6.4.5 PORT shall have the right to review the limits and coverage of insurance required herein from time to time. In the event PORT determines that such limits and/or coverage should be modified, PORT will provide notice to LESSEE of such determination and LESSEE shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide PORT with an updated certificate.

**Section 6.5 - Waiver of Subrogation:** PORT and LESSEE agree that each forfeits any right of action that it may later acquire against the other to the Lease for loss or damage to its property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of LESSEE's property damage policy or policies.

**Section 6.6 - Damage or Destruction of Premises:** If the Premises or Improvements are totally or partially destroyed by fire or any other cause, PORT shall have the option and shall within 60 days from the damage or destruction, notify LESSEE in writing whether or not PORT elects to repair, rebuild, restore the Premises or to terminate this Lease. Upon giving such notice



to terminate, this Lease shall terminate on the date specified in the notice. PORT shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that LESSEE shall be entitled to the insurance proceeds from its own insurance for damage done to LESSEE's personal property within the Premises.

#### **ARTICLE VII - TERMINATION**

**Section 7.1 - Termination by PORT:** PORT shall be entitled to terminate this Lease as provided in Section 8.1 and as may otherwise be provided by law.

**Section 7.2 - Termination by LESSEE:** LESSEE shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

**Section 7.3 - Duties on Termination:** Upon termination of the Lease for any reason, LESSEE shall deliver all keys to PORT and surrender the Premises and Improvements in good condition. Alterations constructed by LESSEE with permission from PORT shall not be removed but shall be restored to the original condition, unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which LESSEE is responsible shall be completed to the latest practical date prior to such surrender.

**Section 7.4 - Title to Improvements:** Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, PORT shall have the option to either require removal of all Improvements within ninety days after the expiration of the Lease at LESSEE's expense or shall have the option to take title to such structures, installations, and improvements. Any or all fixtures placed upon the Premises during the Lease Term, or any

extension thereof, other than LESSEE's trade fixtures, shall, at PORT's option, become the property of PORT. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of LESSEE if placed on the Premises by LESSEE. At or before the termination of this Lease, LESSEE, at its expense, shall remove from the Premises any and all of LESSEE's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of LESSEE's property which remain on the Premises after the termination of this Lease in violation of this Section 7.4 may, at the option of PORT, be deemed abandoned. PORT shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to LESSEE therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at PORT's then current interest rate, from LESSEE upon demand.

**Section 7.5 - Fixtures:**

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than LESSEE's trade fixtures, shall, at PORT's option, become the property of PORT. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of LESSEE if placed on the Premises by LESSEE. At or before the termination of this Lease, LESSEE, at its expense, shall remove from the Premises any and all of LESSEE's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of LESSEE's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of PORT, be deemed



abandoned. PORT shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to LESSEE therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at PORT's then current interest rate, from LESSEE upon demand.

7.5.2 If PORT so elects, LESSEE shall remove any or all fixtures which would otherwise remain the property of PORT, and shall repair any physical damage resulting from the removal. If LESSEE fails to remove such fixtures, PORT may do so and charge the cost to LESSEE with interest at 10 percent per annum from the date of expenditure. LESSEE shall remove all furnishings, furniture and trade fixtures which remain the property of LESSEE. If LESSEE fails to do so, this shall be an abandonment of the property, and PORT may retain the property and all rights of LESSEE with respect to it shall cease or, by notice in writing given to LESSEE within twenty days after removal was required, PORT may elect to hold LESSEE to his obligation of removal. If PORT elects to require LESSEE to remove, PORT may effect a removal and place the property in public storage for LESSEE's account. LESSEE shall be liable to PORT for the cost of removal, transportation to storage, and storage, with interest at PORT's then current on all such expenses from the date of expenditure by PORT.

7.5.3 The time for removal of any property or fixtures which LESSEE is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within thirty days after notice from PORT requiring such removal where the property to be removed is a fixture which LESSEE is not required to remove except after such notice by PORT, and such date would fall after the date on which LESSEE would be required to remove other property.



**Section 7.6 - Holding Over:** If LESSEE shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with PORT upon the terms and provisions of a new lease prior to such expiration, at PORT's discretion, LESSEE shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event PORT deems LESSEE as a month-to-month holdover tenant, LESSEE shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance, the monthly rent to continue as originally established; (2) title to Improvements shall have vested in PORT pursuant to Section 7.4 hereof; (3) PORT shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to LESSEE; and (4) such month-to-month tenancy may be terminated at any time by written notice from PORT to LESSEE. In the event PORT deems LESSEE as a tenant at sufferance, PORT shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if LESSEE is in possession of Premises on July 1 of any year, LESSEE shall be responsible for payment of property taxes for the entire tax year without proration.

#### **ARTICLE VIII - DEFAULT**

**Section 8.1 - Events of Default:** The following shall be events of default:

8.1.1 **Default in Rent:** Failure of LESSEE to pay any rent or other charge as provided herein within ten days after it is due. LESSEE's liability to PORT for default shall survive termination of this Lease.

8.1.2 **Default in Other Covenants:** Failure of LESSEE to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by PORT specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day period, this provision shall be complied with if LESSEE begins correction of

the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 **Insolvency**: To the extent permitted by the United States Bankruptcy Code, insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 **Failure to Occupy**: Failure of LESSEE for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

#### **Section 8.2 - Remedies on Default:**

8.2.1 In the event of a default under the provisions of Sections 8.1, PORT at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by PORT, from time to time, at PORT's election, and nothing in this Lease will be deemed to require PORT to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance.

The exercise or beginning of the exercise by PORT of any such rights or remedies will not preclude the simultaneous or later exercise by PORT of any other such rights or remedies. All such rights and remedies are nonexclusive.

## **ARTICLE IX - GENERAL PROVISIONS**

### **Section 9.1 - Assignment and Sublease:**

9.1.1 This Lease is personal to PORT and LESSEE. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of PORT. Any assignment or attempted assignment without PORT's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If LESSEE is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment PORT may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. PORT may require increased rental to compensate for additional value prior to consent.

**Section 9.2 - Nonwaiver:** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

**Section 9.3 - Adherence to Law:** LESSEE shall adhere to all applicable federal, state,



and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; and (3) all federal, state, regional and local environmental laws.

9.3.1 LESSEE shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. LESSEE shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 LESSEE shall promptly provide to PORT copies of all notices or other communications between LESSEE and any governmental entity which relate to LESSEE's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over LESSEE's use of the Premises.

9.3.3 LESSEE shall obtain, and promptly advise PORT of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that LESSEE may undertake on the Premises. LESSEE shall provide PORT with copies of all such approvals and permits received by LESSEE.

**Section 9.4 - Law of Oregon:** This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this

Lease as if fully set forth herein.

**Section 9.5 - No Benefit to Third Parties:** PORT and LESSEE are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**Section 9.6 - Consent of Port:**

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by PORT is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the Executive Director of PORT of Portland.

9.6.2 If LESSEE requests PORT's consent or approval pursuant to any provision of the Lease and PORT fails or refuses to give such consent, LESSEE shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended LESSEE's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which PORT has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

**Section 9.7 - Vacation:** Upon vacation or abandonment of the Premises by LESSEE prior to the expiration of the Lease Term without written consent of PORT, PORT may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release LESSEE from the obligations herein, but LESSEE shall nevertheless remain liable and continue to be bound, unless PORT, at PORT's election, shall cancel the Lease. Cancellation shall be effected and PORT and LESSEE released from all

obligations under this Lease, upon the mailing of such notice of cancellation by PORT to LESSEE at LESSEE's last known address, provided that LESSEE shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in PORT.

**Section 9.8 - Notices:** All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to PORT at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to LESSEE at Stevedoring Services of America, 3556 N.W. Front Avenue, Portland, OR 97210-1302. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

**Section 9.9 - Time of the Essence:** Time is of the essence of each and every covenant and condition of this Lease.

**Section 9.10 - Survival:** All covenants and conditions (including but not limited to indemnification agreements), set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**Section 9.11 - Partial Invalidity:** If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other



than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 9.12 - No Light or Air Easement:** The reduction or elimination of LESSEE's light, air, or view will not affect LESSEE's liability under this Lease, nor will it create any liability of PORT to LESSEE.

**Section 9.13 - Headings:** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

**Section 9.14 - Rules and Regulations:** PORT or its Executive Director or the Executive Director's designee may, from time to time adopt and enforce reasonable rules and regulations with respect to the use of the Premises and contiguous property owned by PORT, which LESSEE agrees to observe and obey.

**Section 9.15 - Modification:** Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto.

**Section 9.16 - Warranty of Authority:** The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

**Section 9.17 - Attorney's Fees:** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to

costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**Section 9.18 - Absence of Brokers:** LESSEE and PORT each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

**Section 9.19 - Entire Agreement:** It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by LESSEE that PORT and PORT's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by LESSEE against PORT for, and PORT shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with PORT being expressly waived by LESSEE.

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IN WITNESS HEREOF, the parties have subscribed their names hereto this 19<sup>th</sup> day of

January 19 93.

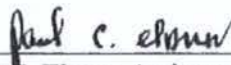
**STEVEDORING SERVICES OF  
AMERICA**

By:   
Bruce Whisnant, Senior Vice President

**PORT OF PORTLAND**

By:   
Mike Thorne, Executive Director

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By:   
Paul C. Elsner, Assistant General Counsel  
for the Port of Portland

**APPROVED BY COMMISSION ON:**

January 13, 1993

December 10, 1992

SSA'93



**AMENDMENT NO. 1  
TO  
OFFICE LEASE  
BETWEEN  
STEVEDORING SERVICES OF AMERICA  
AND  
THE PORT OF PORTLAND**

This AMENDMENT NO. 1 TO OFFICE LEASE ("Amendment No. 1") dated as of the 2nd day of February, 1999<sup>2000</sup>, is made and entered into by and between STEVEDORING SERVICES OF AMERICA, a corporation duly organized under the laws of the State of California ("Lessee") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Lessee entered into an office lease effective February 8, 1993, Port Agreement No. 93-006 (the "Lease")

B. Lessee now wishes to amend the Lease to add a storage room to the Premises.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECTION 1.1 - DESCRIPTION OF PREMISES**

Section 1.1 of the Lease is hereby amended to add the following to the Premises. The storage room, (the "Storage Room"), identified as room #238, currently consisting of approximately 222 square feet, shall be added to the Premises as shown on **Exhibit A1**. The Storage Room shall thereafter be remodeled and expanded pursuant to Section 2 of this Amendment No. 1 to approximately 290 square feet as shown on **Exhibit A2** (the "Expanded Premises").

**2. CONSTRUCTION OF EXPANDED PREMISES**

The Port shall undertake to remodel and expand the Premises so as to create the Expanded Premises as follows: the west wall of the Storage Room shall be moved to match the window mullion; the current doorway will be walled up; a door will be installed between the Storage Room and the common area hallway; and HVAC and electrical will be modified in the Storage Room to meet code. The Port will invoice Lessee, and Lessee agrees to pay within 30 days of invoice, for construction costs, currently estimated at approximately \$6,000. Construction of the Expanded Premises will begin after February 1, 2000 as part of a larger project that will take approximately

two months to complete. The Port will incur no liability for any delays in completion of construction of the Expanded Premises.

**3. RENT**

Effective January 1, 2000 Lessee will pay Basic Rent and Operating Charge for the added 222 square feet as shown on **Exhibit A1** at the per-square-foot rates currently in effect for the Lease, pursuant to Article III. Lessee will pay Basic Rent and Operating Charge for the Expanded Premises as shown on **Exhibit A2** beginning the first day of the month following notification from the Port of completion of construction of the Expanded Premises.

Except as amended hereby, all other terms of the Lease shall remain in full force and effect.

**STEVEDORING SERVICES OF  
AMERICA**

By: \_\_\_\_\_

*Bruce Whitnall*  
BRUCE WHITNALL  
SR. V.P.

**THE PORT OF PORTLAND**

By: \_\_\_\_\_

*Mike Thorne*  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: \_\_\_\_\_

*V. F. Sullivan*  
Counsel for the Port of Portland

LEASE AGREEMENT  
BETWEEN  
STEVEDORING SERVICES OF AMERICA  
AND  
THE PORT OF PORTLAND



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## LEASE

THIS LEASE is entered into this 1<sup>st</sup> day of April, 1993, by and between STEVEDORING SERVICES OF AMERICA, a corporation duly organized under the laws of the State of California (hereinafter referred to as SSA) and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as PORT).

## RECITALS

WHEREAS, PORT desires to lease land located at 3445 N.W Front Avenue to SSA, said land being more particularly described below; and

WHEREAS, SSA is desirous of leasing said land;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

Section 1.1 - Description of Premises: PORT leases to SSA, and SSA leases from PORT, on the terms and conditions stated below, approximately .501 acres of land across from Terminal 2, Portland, Oregon, identified in Exhibit Plat No. T-2 92-5 1/1 attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon (hereinafter referred to as Premises). The Premises shall include, without limitation, lighting, driveways, gates, fences, utility distribution facilities, or signs (each an "improvement" and collectively the "Improvements"). Upon construction or installation of any additional improvements, approved by PORT as provided herein, in, under, or upon the Premises, such improvements shall become a part of the Premises unless otherwise stated herein.



Section 1.2 - Use of Premises: SSA may use the Premises only for the following purposes: storage of chassis and other equipment connected to SSA's business at Terminal 2.

1.2.1 No other use may be made of the Premises without the written approval of PORT. Without expanding the foregoing restriction on use, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as that term is defined in Section 6.2 hereof. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

Section 1.3 - Appurtenant Rights: SSA shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of PORT to exercise its governmental or regulatory powers over the Common Areas, as defined herein.

1.3.1 SSA, its customers, agents, representatives, and invitees shall have the non-exclusive right to use the Common Area driveway (identified on Exhibit A as the vacated portion of NW 26th Ave.), such right to be in common with others to whom PORT has granted or may grant such similar right.

1.3.2 PORT reserves the following rights with respect to the Common Area:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Area;

1.3.2.2 To use or permit the use of such Common Area by others as the Port deems appropriate;

1.3.2.3 To close all or any portion of the Common Area to make repairs, changes, prevent the accrual of any rights to any person or the public, or to discourage unpermitted use thereof;

1.3.2.4 To construct alter or remove buildings or other improvements in the Common Area and to change the layout of such Common Area, including the right to add to or subtract from its shape and size; and

1.3.2.5 To transfer ownership of such Common Area.

## ARTICLE II - TERM

Section 2.1 - Term: This Lease shall commence on May 1, 1993, and shall continue through April 30, 1994, ("Lease Term"), unless sooner terminated under the provisions hereof. As used herein, "Lease Year" shall mean the period from May 1 through April 30 of each year.

Section 2.2 - Renewal: If SSA is not in default under this Lease, and no event has occurred or failed to occur and no condition exists that with or without notice and the passage of time could ripen into such a defaults, upon conclusion of the applicable expiring term, SSA shall have two options to renew this Lease on the same terms and conditions except for rent. The option shall be for one year each and shall be exercised by giving the PORT notice in writing at least 60 days prior to the end of the expiring term.

## ARTICLE III - RENT

Section 3.1 - Basic Rent: SSA shall pay, in advance, to PORT the sum of \$654.71 per month as rent based on \$.03 per-square-foot-per-month for .501 acres of graveled and fenced yard.

Section 3.2 - Time and Place of Payments:

3.2.1 Monthly rental payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the month being prorated.

3.2.2 Payments shall be made to PORT at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as PORT may designate in writing. All amounts not paid by SSA when due shall bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect PORT's then current rate for overdue accounts.

Section 3.3 - Rent Upon Renewal: Upon exercise of the first option period and continuing through the second option period, SSA shall pay, in advance, to PORT the sum of \$763.82 per month as rent based on \$.035 per-square-foot-per-month for .501 acres of graveled and fenced yard.

Section 3.4 - Acceptance of Late Rent: PORT shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event PORT elects to accept a tender PORT may do so without thereby waiving any default based upon the failure of SSA to make such payment when due and without waiving SSA's obligation to make such payments when required under the terms of this Lease. SSA hereby acknowledges by signing this lease, SSA waives the argument that by accepting late payment, PORT has waived any default based upon that late payment or has waived SSA's obligation to make all payments when and as required by the terms of this



Lease.

#### ARTICLE IV - SSA'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: SSA shall make no construction, alteration, or changes on or to the Premises without the prior written consent of PORT, which shall not be unreasonably withheld.

4.1.1 No such work shall be undertaken until SSA has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to SSA's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all relevant laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements shall be no less than the value and utility of such Improvements immediately prior to such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, PORT may require SSA to deliver to PORT complete and fully detailed "AS-BUILT" drawings of the completed Improvements as appropriate.

Section 4.2 - Maintenance: SSA shall maintain the Premises and as such shall repair any damage caused to the Premises during the Lease Term, reasonable wear and tear excepted. At the end of this Lease or any extensions, SSA shall regrade or gravel the yard so that it is in substantially the same condition as it was prior to SSA taking over the Premises. SSA shall

provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at SSA's expense, and shall otherwise keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: SSA agrees to pay all lawful taxes, assessments, and in-lieu assessments which may occur during the Lease Term hereof or any extension which may be levied by the state, county, city, or any other tax-levying body upon the Premises or Improvements, or upon any taxable interest by SSA acquired in this Lease, or any taxable possessory right which SSA may have in or to the Premises thereon by reason of its occupancy thereof, as well as all taxes, real or personal, owned by SSA in or about said Premises. Upon making such payments, SSA shall give to PORT a copy of the receipts and vouchers showing such payment. SSA understands that Port property is exempt from property taxation unless leased to a taxable entity. In the event SSA occupies the Premises on July 1 of any year, SSA shall be responsible for payment of property taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law. With respect to assessments for public improvements which are or may be payable in Bancroft installments, SSA shall be required to pay only those installments which become due during the Lease Term. SSA understands that for the Premises to qualify for in-lieu real property tax assessments, SSA must request an appraisal and computation of the in-lieu tax from the Multnomah County assessor on or before June 30 of each year, must pay the in-lieu tax in the amount of one-quarter of one percent of the true cash value of the Premises, and if such request is not made, that property may be taxed as other property similarly situated not qualifying for the in-lieu tax. PORT, shall notify SSA of tax liability and/or in-lieu tax liability whenever it receives actual written notice of such. Other than the foregoing notice requirement, SSA hereby releases PORT from any liability for further notices of tax liability

or in-lieu tax liability.

Section 4.4 - Liens: SSA agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with SSA's consent to be furnished to or for SSA in, upon, or about the Premises, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or PORT's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that SSA may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that PORT may require SSA to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: SSA shall promptly pay any charges for electricity and all other charges for utilities of any sort that may be furnished to the Premises at the request of or for the benefit of SSA, including any and all connection fees and impervious surface fees charges by the City of Portland. SSA agrees to pay any charges for additional metering which may be required because of this Lease. Upon the completion of the installation of any new meters, SSA shall provide PORT with a survey/map indicating the location of the meter.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, SSA shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by SSA. SSA shall not permit to be erected, installed or operated upon the Premises any sign or



other advertising device without first having obtained PORT's written consent thereto, which shall not be unreasonably withheld, provided that PORT may condition the installation as to size, construction, location, and general appearance.

Section 4.7 - Safety Requirements:

4.7.1 SSA shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. SSA shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for SSA in any way connected with the conduct of SSA pursuant to this Lease.

4.7.2 SSA shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Premises adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, PORT shall at all times during ordinary business hours have the right to enter upon the Premises for the purposes of: (1) inspecting the same; (2) confirming the performance by SSA of its obligations under this Lease; (3) doing any other act which PORT may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: PORT reserves the right to inspect SSA's management of Hazardous Substances as defined in Section 6.2, on the Premises at any time

and from time to time without notice to SSA. If PORT at any time during the Lease Term or any extension thereof has reason to believe that SSA is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, PORT may require SSA to furnish to PORT, at SSA's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to PORT. In the event PORT determines that contamination is reasonably likely to occur, PORT may require only such protective measures as are reasonably required to prevent contamination.

Section 4.9 - Hazardous Substances, Spills and Releases:

4.9.1 SSA shall immediately notify PORT upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to SSA or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.9.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, SSA shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. PORT shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action,

SSA shall provide PORT with a certificate acceptable to PORT that all such contamination has been eliminated as required by federal, state, or local law or regulations.

#### ARTICLE V - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Delivery of Premises: SSA shall have the right to possession of the Premises as of the effective date of the Lease Term hereof. Should PORT be unable to deliver possession of the Premises on the date fixed for the commencement of the Lease Term, SSA shall owe no rent until notice from PORT tendering possession to SSA. If possession is not so tendered within sixty days following commencement of the Lease Term, then SSA may elect to cancel this Lease by notice to PORT within ten days following expiration of the sixty-day period. PORT shall have no liability to SSA for delay in delivering possession, nor shall such delay extend the Lease Term in any manner.

Section 5.2 - Port's Warranty of Ownership: PORT warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to SSA performing all obligations of this Lease, SSA's possession of the Premises will not be disturbed by PORT or anyone claiming by, through or under PORT and PORT will defend SSA's right to quiet enjoyment of the Premises from disturbance by anyone claiming by, through or under PORT.

Section 5.3 - Condition of Premises: PORT makes no warranties or representations regarding the condition of the Premises. SSA has inspected and accepts the Premises in an "as is" condition, and PORT shall have no liability to SSA for any damage or injury caused by the condition of Premises. SSA understands that although the Premises has been graded and graveled, the Premises is subject to ponding after a rain which the grading and graveled will



not cure.

## ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION

### Section 6.1 - General Indemnity:

6.1.1 SSA shall indemnify, save and hold harmless, and defend PORT, its commissioners, directors, officers, and employees from and against all claims, actions, and expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of SSA or its employees in the use or occupancy of the Premises; provided that PORT shall give to SSA prompt and reasonable notice of any such claims or actions, and SSA shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of PORT.

6.1.2 PORT, to the extent permitted by law, shall indemnify, save and hold harmless and defend SSA, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that SSA shall give to PORT prompt and reasonable notice of any such claims or actions, and PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or alleged to be caused by the negligence of SSA.

Section 6.2 - Hazardous Materials Indemnity: In addition to the indemnity provided in Section 6.1 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all costs (as defined below) incurred by the Port or assessed against the Port under

Environmental Laws (as defined below), which costs arise out of, or are in connection with, the actual use, generation, treatment, handling, storage, discharge, transportation, or disposal of Hazardous Substances (as defined below), including any actual spill, leak or release.

6.2.1 Costs: Costs shall include, but not be limited to: (a) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) all expenses of evaluation, testing, and analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (e) any and all expenses or obligations, including attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone charges and other expenses; and (f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

6.2.2 Environmental Laws: Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Federal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); the Clean Water Act (33 U.S.C. §1251, et. seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.); the Resource Conservation



and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Safe Drinking Water Act (44 U.S.C. §3330 et seq.); the Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazardous (ORS 466.360 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

6.2.3 Hazardous Substances: Hazardous Substances shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants which are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

6.2.4 Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises, at its own cost and expense, all Hazardous Substances, whether in existence prior to the commencement date of this Lease or thereafter,



and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is dully owing and so notifies Lessee.

Section 6.3 - Insurance:

6.3.1 SSA shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of \$5,000,000 and automobile liability insurance with a minimum combined single limit of \$1,000,000 for the protection of SSA and PORT, its commissioners, directors, officers, servants, and employees, insuring SSA and PORT against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of SSA on or from the Premises. SSA shall also maintain fire legal liability insurance for the duration of this Lease.

6.3.2 SSA shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability, Longshore and Harbor Workers' Compensation Act, if applicable.

6.3.3 All insurance policies shall name PORT, its commissioners, officers, agents, and employees as additional insureds. The policies shall further provide that the underwriter(s) or provider(s) is obligated to give PORT at least thirty days written notice before such policies may be revised, non-renewed or cancelled.

6.3.4 SSA shall furnish PORT with certificates of insurance evidencing the date, amount, and type of insurance or self-insurance that has been procured pursuant to this Lease.

6.3.5 PORT shall have the right to review the limits and coverage of insurance required herein from time to time. In the event PORT determines that such limits and/or coverage should be modified, PORT will provide notice to SSA of such determination and SSA shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide PORT with an updated certificate.

#### ARTICLE VII - TERMINATION

Section 7.1 - Termination by PORT: PORT shall be entitled to terminate this Lease at any time for any reason by giving SSA at least 60 days written notice of its intent to cancel, or as provided herein and as otherwise provided by law.

Section 7.2 - Termination by SSA: SSA shall be entitled to terminate this Lease at any time for any reason by giving PORT at least 60 days written notice of its intent to cancel, or as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, SSA shall deliver all keys to PORT and surrender the Premises in good condition, including regrading and graveling as needed per Section 4.2. Alterations constructed by SSA with permission from PORT shall not be removed but shall be restored to the original condition, unless the terms of permission for the alteration otherwise allow. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which SSA is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon

termination of this Lease by the passage of time or for any reason, PORT shall have the option to either require removal of any or all Improvements installed by SSA within ninety days after the expiration of the Lease at SSA's expense or shall have the option to take title to such structures, installations, and improvements. Any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than SSA's trade fixtures, shall, at PORT's option, become the property of PORT. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of SSA if placed on the Premises by SSA. At or before the termination of this Lease, SSA, at its expense, shall remove from the Premises any and all of SSA's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of SSA's property which remain on the Premises after the termination of this Lease in violation of this Section 7.4 may, at the option of PORT, be deemed abandoned. PORT shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to SSA therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at PORT's then current interest rate, from SSA upon demand.

Section 7.5 - Holding Over: If SSA shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with PORT upon the terms and provisions of a new lease prior to such expiration, at PORT's discretion, SSA shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event PORT deems SSA as a month-to-month holdover tenant, SSA shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance; (2) title to Improvements shall have



vested in PORT pursuant to Section 7.4 hereof; (3) PORT shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to SSA; and (4) such month-to-month tenancy may be terminated at any time by written notice from PORT to SSA. In the event PORT deems SSA as a tenant at sufferance, PORT shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if SSA is in possession of Premises on July 1 of any year, SSA shall be responsible for payment of property taxes for the entire tax year without proration.

Section 7.6 - Environmental Inspection: Prior to the end of the Lease Term hereof, PORT and SSA shall conduct a joint inspection of the Premises with each party bearing their respective costs. In the event environmental pollution or contamination is discovered for which SSA is liable under the terms of this Lease on the Premises or adjacent property, SSA shall promptly remedy any contamination revealed in accordance with the then applicable regulations, prior to the expiration of the Lease Term. Upon conclusion of the remediation or removal, PORT may require SSA, at its cost, to conduct an environmental audit of the Premises, acceptable to PORT, to determine if the environmental contamination has been adequately removed or otherwise remediated. PORT shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of the results. In the event SSA fails to remedy the contamination, PORT shall have the right to remedy such contamination and charge SSA all such costs. SSA agrees to pay to PORT such costs within thirty days after receipt of invoice from PORT, such right to be in addition to any other remedy available to PORT as provided herein, at law, or by equity.

7.6.1 Until such time as SSA has fulfilled all the requirements of Section 7.6 above, PORT may, at its option, treat SSA as a holdover tenant and all provisions pursuant to Section 7.5 shall apply.

7.6.2 If SSA does not conduct said audit as required herein, PORT may, at its sole option, complete said audit at SSA's expense. Until said audit and any remedial actions as required to restore the Premises to an acceptable condition are completed, SSA shall not be released from any liability for such costs.

#### ARTICLE VIII - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of SSA to pay any rent or other charge as provided herein within ten days after it is due. SSA's liability to PORT for default shall survive termination of this Lease.

8.1.2 Default in Other Terms: Failure of SSA to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by PORT specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day period, this provision shall be complied with if SSA begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of SSA; an assignment by SSA for the benefit of creditors; the filing by SSA of a voluntary petition in bankruptcy; an adjudication that SSA is bankrupt or the appointment of a receiver of the properties of SSA and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of SSA to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of SSA to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of SSA for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Sections 8.1, PORT at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by PORT, from time to time, at PORT's election, and nothing in this Lease will be deemed to require PORT to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by PORT of any such rights or remedies will not preclude the simultaneous or later exercise by PORT of any other such rights or remedies. All such rights and remedies are non-exclusive.

ARTICLE IX - GENERAL PROVISIONS

Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to PORT and SSA. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of PORT. Any



assignment or attempted assignment without PORT's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If SSA is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment PORT may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. PORT may require increased rental to compensate for additional value prior to consent.

Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing.

Section 9.3 - Adherence to Law: SSA shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation Jones Act (46 USC §688), and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; and (3) all federal, state, regional and local environmental laws.

9.3.1 SSA shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. SSA shall not permit any act to be done or any condition to exist on the Premises or any part thereof which

may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 SSA shall promptly provide PORT copies of all notices or other communications between SSA and any governmental entity which relate to SSA's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over SSA's use of the Premises.

9.3.3 SSA shall obtain, and promptly advise PORT of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that SSA may undertake on the Premises. SSA shall provide PORT with copies of all such approvals and permits received by SSA.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon.

Section 9.5 - No Benefit to Third Parties: PORT and SSA are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.6 - Consent of Port:

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by PORT is required under the terms contained herein, all such consent, approval or direction must be in writing from the Executive Director.

9.6.2 If SSA requests PORT's consent or approval pursuant to any provision

of the Lease and PORT fails or refuses to give such consent, SSA shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended SSA's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which PORT has acted unreasonably or has expressly agreed in writing not to unreasonably withhold its consent or where PORT may not unreasonably withhold its consent as a matter of law.

Section 9.7 - Vacation: Upon vacation or abandonment of the Premises by SSA prior to the expiration of the Lease Term without written consent of PORT, PORT may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release SSA from the obligations herein, but SSA shall nevertheless remain liable and continue to be bound, unless PORT, at PORT's election, shall cancel the Lease. Cancellation shall be effected and PORT and SSA released from all obligations under this Lease, upon the mailing of such notice of cancellation by PORT to SSA at SSA's last known address, provided that SSA shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in PORT.

Section 9.8 - Notices: All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to PORT at PORT of Portland, Post Office Box 3529, Portland, Oregon 97208, and to SSA at Stevedoring Services of America, 2336 NW Front Ave., Portland, OR 97210-1302. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.



Section 9.9 - Time of the Essence: Time is of the essence of each and every term of this Lease.

Section 9.10 - Survival: All terms (including but not limited to indemnification agreements), of this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.11 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.12 - No Light or Air Easement: The reduction or elimination of SSA's light, air, or view will not affect SSA's liability under this Lease, nor will it create any liability of PORT to SSA.

Section 9.13 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.14 - Rules and Regulations: PORT may adopt and enforce rules and regulations with respect to the use of the Premises and contiguous property owned by PORT, which SSA agrees to observe and obey.

Section 9.15 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto.

Section 9.16 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.17 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.18 - Absence of Brokers: SSA and PORT each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only, the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorneys', accountants', and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connections with this Lease.

Section 9.19 - Entire Agreement: It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed

by SSA that PORT and PORT's agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as is expressly set forth in this Lease, and that no claim or liability or cause for termination shall be asserted by SSA against PORT for, and PORT shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease, any other oral agreement with PORT being expressly waived by SSA.

IN WITNESS HEREOF, the parties have subscribed their names hereto this 15<sup>th</sup>  
day of April 1993.

STEVEDORING SERVICES OF  
AMERICA

By: 

Bruce L. Whisnant,  
Senior Vice President

PORT OF PORTLAND

By: 

Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By: 

Paul C. Elsner, Assistant General Counsel  
for the Port of Portland

SSACHASSIS

March 24, 1993



93-086

**TERMINAL USE AGREEMENT  
BETWEEN  
BHP INTERNATIONAL MARINE TRANSPORT INC.  
AND  
THE PORT OF PORTLAND**

POPT2100376

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TERMINAL USE AGREEMENT  
BETWEEN  
BHP INTERNATIONAL MARINE TRANSPORT INC.  
AND  
THE PORT OF PORTLAND

THIS AGREEMENT is made and entered into at Portland, Oregon, by and between BHP INTERNATIONAL MARINE TRANSPORT INC., a Delaware Corporation, referred to hereinafter as "BHP IMT" and THE PORT OF PORTLAND, a Port District existing under the laws of the State of Oregon, hereinafter called the "PORT."

**W I T N E S S E T H:**

In consideration of the mutual covenants and agreements set forth to be kept and performed by the parties, the PORT and BHP IMT agree as follows:

**ARTICLE I - TERM**

**Section 1.1 - Term :**

This Agreement shall be for a term of three years beginning July 5, 1993 and shall continue through July 4, 1996. As used herein, "Contract Year" shall mean the period from July 5 through July 4 each year.

**Section 1.2 - Options:**

If BHP IMT is not in default at the expiration of this Agreement, BHP IMT shall have two options to renew this Agreement, under the same terms and conditions, for two years each. BHP IMT shall give the PORT notice in writing at least 60 days in advance of the end of the Contract Year stating their intention to renew this Agreement.

**ARTICLE II - PREMISES**

The Premises as used throughout this Agreement shall be the PORT's Marine Terminals 2, 4 and 6 and adjacent docks and berths and the appropriate back-up area immediately adjacent to the docks, as assigned by the appropriate terminal operator, hereinafter called "Terminal Operator."

**ARTICLE III - USE OF PREMISES**

BHP IMT shall have a right to use the Premises for all vessel operations within the capabilities of the Premises, handling either their eastbound or westbound cargo, excluding bulk cargoes, subject to the following conditions and reservations:

**Section 3.1 - Services:**

The Terminal Operator shall be responsible for terminal handling services, and truck, rail, and barge loading and unloading for BHP IMT. BHP IMT agrees to pay for those services and any other services BHP IMT uses or is otherwise responsible for on or over the Premises in



accordance with Article IV. BHP IMT shall have the right to contract separately for vessel stevedoring and dock-handling services for loading and unloading of cargo between the vessel and the place of rest on the terminal only at Terminals 2 and 4.

**Section 3.2 - Port of Call:**

BHP IMT agrees to use the Port as the designated Columbia River Public Port of Call during the term of this Agreement or any extensions thereof.

**Section 3.3 - Assignment:**

BHP IMT shall not assign any of its rights hereunder, or allow use of the Premises by others without the prior written approval of the Terminal Operator. BHP IMT may engage subsidiaries and/or agents to perform BHP IMT's own services as described herein.

**ARTICLE IV - RENT**

**Section 4.1 - Applicable Rates:**

All cargo moving in BHP IMT's operations on or over the Premises are subject to the Port of Portland Terminal Tariff No. 6, and any supplements, replacements and reissues thereof (hereinafter called "Tariff"). BHP IMT agrees to pay all applicable port charges for services provided at BHP IMT's request at rates published in Tariff, except as stated in Section 4.2 below and subject to the terms of this Agreement and except where a separate agreement with the Terminal Operator may differ.

**Section 4.2 - Revenue Sharing:**

BHP IMT shall receive a 10 percent rebate of wharfage and dockage on Port earned revenue regardless of payor with respect to BHP IMT operations at the Premises. The dockage and wharfage rebate will be 15 percent for revenue exceeding \$425,000 in any single contract year. Revenue generated as a result of bulk cargoes handled by BHP IMT shall not be included for purposes of calculating revenue sharing under this Section. PORT shall rebate to BHP IMT within 45 days after the close of the month in which the dockage and wharfage was billed.

**Section 4.3 - Projected Annual Volumes:**

As of the date of this Agreement, BHP IMT anticipates annual volumes delivered by or to it over the Premises as set out in Table I. BHP IMT does not have fixed tonnage contracts with shippers. It is understood that the figures in Table I are not guaranteed, but that BHP IMT will make every reasonable effort to meet the indicated volume, subject to freight rates for the listed commodities being satisfactory to BHP IMT.

**Table I**

|                   |            |
|-------------------|------------|
| Export Lumber     | 15,000 MBM |
| Export Paper/Pulp | 5,000 MT   |
| Import Lumber     | 10,000 CBM |
| Import Steel      | 12,000 MT  |

**Section 4.4 - Minimum Annual Guarantee:**

BHP IMT guarantees Minimum Annual Revenue billed by the PORT and the Terminal Operators of \$150,000 for wharfage and dockage for each year of this Agreement. In the event BHP IMT fails to meet the Minimum Annual Revenue Guarantee in any contract year, BHP IMT shall pay PORT either the amount of the shortfall of the Minimum Annual Revenue Guarantee or, in the alternative, the amount of the revenue share paid BHP IMT by the PORT for that Contract Year, with interest at prime plus 2 percent. The choice shall be BHP IMT's, but in any event, payment shall be made no later than 45 days after the close of the Contract Year.

**ARTICLE V - PAYMENT**

**Section 5.1:**

BHP IMT agrees to pay all charges imposed by the terms of this Agreement on a vessel-by-vessel basis as per invoice submitted by the Terminal Operator as those charges are set out in the "Tariff."

**Section 5.2:**

Terms are cash. All charges and advances are due and payable as accrued. Invoices issued by the Terminal Operator are due and payable upon presentation to BHP IMT. Any invoice, or part thereof, remaining unpaid for a period of more than thirty calendar days after the date of the invoice may be deemed delinquent and may be subject to all appropriate delinquency charges as specified in the "Tariff." In the event payment by BHP IMT is withheld as subject to a good faith dispute and such amounts, or portions thereof, are later determined to be rightly due and owing, said amounts, or portions thereof, may be subject to a delinquency charge as of the first day of delinquency.

**ARTICLE VI - FORCE MAJEURE**

**Section 6.1:**

The duties and obligations of each of the parties hereunder may be suspended during such time as performance by either party is prevented or made impracticable by occurrences beyond the control of the party affected, and to the extent such occurrences are not due to the fault or negligence of the party affected. Such occurrences include but are not limited to strikes, labor disturbances, riots, fire, governmental action, war, acts of God, or other circumstances of similar nature. The party seeking relief under this clause is required to have used reasonable diligence in overcoming such obstacles, and performance shall resume within a reasonable time after the obstacle is removed.



**Section 6.2:**

In the event that performance is prevented or made impractical under the provisions of Section 6.1, or there is reasonable certainty that performance will be prevented or made impractical for a period of sixty days or more, either party may terminate this Agreement by delivering to the other party thirty days written notice of its intent to do so.

**ARTICLE VII - RULES, REGULATIONS AND LAWS**

BHP IMT agrees to comply with all applicable rules and regulations or ordinances of the PORT, including those adopted by the Executive Director or his designee, pertaining to the Premises or any buildings or structures located thereon either now in existence or hereafter promulgated for the general safety and convenience of the PORT, its tenants, invitees, licensees, and the general public. BHP IMT further agrees to comply with all applicable federal, state, and municipal laws, ordinances and regulations, and BHP IMT further agrees to indemnify and hold harmless the PORT, its Commissioners, officers, agents, and employees from any liability or penalty which may be imposed by governmental authorities by reason of any asserted violation by BHP IMT or its agents of the foregoing.

**ARTICLE VIII - NOTICES**

All notices required under this Contract shall be deemed to be properly served if sent by certified mail to the address listed in this Section, or to such other address as each party may indicate to the other in writing. Until hereafter changed by the parties by notice in writing, notices shall be sent to the PORT at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to BHP IMT at International Marine Transport Inc., 505 14th Street, Suite 920, Oakland, California 94612. Date of Service of such notice is date such notice is deposited in a post office of the United State, postage prepaid.

**ARTICLE IX - WAIVERS**

No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. Termination under any provision of this Agreement shall not affect any right, obligation, or liability of BHP IMT or the PORT which accrued prior to such termination.

**ARTICLE X - DEFAULT**

This Agreement is made upon the condition that if the sums which BHP IMT herein agrees to pay, or any part thereof remain unpaid on the date on which the same become due, or if BHP IMT defaults on any of the terms, conditions or covenants contained herein, or should BHP IMT abandon and cease to use the Premises for a period of sixty days at any one time except as provided by Article VI, then and in such event, at the option of the PORT, this Agreement may be terminated. Thereafter the full balance for the entire Agreement term shall be due and payable. No default in this Agreement shall be declared by the PORT as to any breach which is subject to being cured by BHP IMT within thirty days of that breach. In the event the breach is not cured by BHP IMT within that time, the PORT may declare a default of the Agreement and at any time thereafter have the right to exercise any and all remedies available to a party provided for in



either law or equity.

#### **ARTICLE XI - APPLICABLE LAW**

It is expressly understood and agreed that this Agreement, including the PORT's obligation to indemnify BHP IMT from the PORT's negligent acts, and all questions arising thereunder shall be construed according to the laws of the State of Oregon and the United States of America, and jurisdiction shall be the Circuit Court of the State of Oregon, Multnomah County.

#### **ARTICLE XII - DISPUTE RESOLUTION**

Should any dispute arise between the parties to this Agreement, it is agreed that the dispute will be submitted to a mediator, agreed to and compensated equally by both parties, prior to commencement of litigation. Mediation will be conducted in Portland, Oregon, unless both parties agree otherwise. Both parties agree to exercise their best efforts in good faith to resolve all disputes in mediation. If a party requests mediation and the other party fails to respond in ten days, or if the parties fail to agree on a mediator within ten days, a mediator will be appointed by the Presiding Judge of the Multnomah County Circuit Court upon the request of either party.

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the appellate court.

#### **ARTICLE XIII - INDEMNIFICATION**

##### **Section 13.1:**

BHP IMT shall, to the extent permitted by law, indemnify, save and hold harmless, and defend the PORT, its commissioners, directors, officers, and employees from and against all claims, actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or property, caused by the fault or negligence in whole or in part of BHP IMT or its employees in the use or occupancy of the Premises; provided that the PORT shall give to BHP IMT prompt and reasonable notice of any such claims or actions, and BHP IMT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of the PORT.

##### **Section 13.2:**

To the extent permitted by law, the PORT shall indemnify, save and hold harmless, and defend BHP IMT, its directors, officers, employees, representatives, and agents from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of injuries or damages to third persons or their property, caused by the fault or negligence in whole or in part of the PORT, its employees, contractors, or agents in the use or maintenance of the Premises; provided that BHP IMT shall give to the PORT prompt and reasonable notice of any such claims or actions, and the PORT shall have the right to investigate, compromise, and/or defend the same. This indemnity shall not extend to that portion of a claim or claims arising from or caused by the negligence of BHP IMT.

The PORT further agrees, to the extent permitted by law, to indemnify, save, hold

harmless and defend BHP IMT, its directors, officers, employees representatives and agents from any liability or penalty which may be imposed on the PORT's by federal, state or local governmental authorities by reason of the PORT'S violation (or that of its employees or agents) or any applicable statutes, ordinances, rules and regulations.

#### ARTICLE XIV - TAXES AND OTHER GOVERNMENTAL CHARGES

BHP IMT agrees to pay any and all lawful taxes, assessments, or governmental charges that may be levied by any tax-levying body upon any taxable interest which BHP IMT acquires under this Agreement or any taxable possessory right which BHP IMT may have in or on the Premises.

#### ARTICLE XV - MODIFICATIONS

This Agreement may be modified, altered or amended by the PORT and BHP IMT only with the express written consent of both parties.

IN WITNESS WHEREOF, the parties hereto have subscribed names as of the 9<sup>th</sup> day of June, 1993.

BHP INTERNATIONAL MARINE  
TRANSPORT INC.

THE PORT OF PORTLAND

By: George Coppo  
George Coppo, President

By: Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: Paul C. Elsner  
Paul C. Elsner  
Assistant General Counsel

June 2, 1993

92-1164

**LEASE AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN-TOWING CO., INC.  
AND  
THE PORT OF PORTLAND**



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## LEASE

THIS LEASE dated this 13<sup>th</sup> day of DEC, 1993, is entered into by and between SAUSE BROS. OCEAN-TOWING CO., INC., a corporation duly organized under the laws of the State of Oregon (hereinafter referred to as Lessee) and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as the Port).

## RECITALS

The Port desires to lease certain office space located in the Terminal 2 Administration Building to Lessee, said office space being more particularly described below; and

Lessee is desirous of leasing said office space;

The parties intending to be legally bound by the terms and conditions contained in this document, and in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

**Section 1.1 - Description of Premises:** The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated below, approximately 2,479 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. LP-22 attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon and appurtenances thereto (hereinafter referred to as Premises). The actual square footage may be adjusted based upon a final survey performed by the Port after completion of the improvements described in Section 5.4. Upon construction or installation of any additional improvements approved by the Port as provided herein, in, under, or upon the Premises, such Improvement(s) shall become a part of the Premises except to the extent specifically excluded under the terms of this Lease.

**Section 1.2 - Use of Premises:** Lessee may use the Premises only for the following purposes: office space.

1.2.1 No other use may be made of the Premises without the written approval of the Port. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, without limiting the foregoing restriction on use, no



use may be made of, on, or from the Premises relating to the handling, generation, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.2 hereof. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

1.2.2 Lessee shall not use or permit in or on the Premises, the building or any related property, anything that shall increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any illegal purposes, and that Lessee shall comply at Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises by Lessee, the Port to be responsible for any modifications or improvements generally required to be made with respect to the Building or the Premises to cause the same to be in compliance with the Americans With Disabilities Act, applicable building codes (including improvements mandated by seismic requirements) and other similar laws generally applicable to the building and the Premises.

**Section 1.3 - Appurtenant Rights:** Lessee shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of the Port to exercise its governmental powers in any way, including such as may affect the Premises, Common Areas, or any other area under the jurisdiction of the Port.

1.3.1 Lessee, its customers, agents, representatives, and invitees shall have the non-exclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by the Port within

Terminal 2 where such areas have been designated by the Port as areas to be used by the general public, by the business invitees, by tenants in common with other tenants, or by general public in common with tenants provided that nothing stated in this Lease shall prohibit the Port from barring from Port property any person or entity which fails to comply with applicable laws, ordinances and rules and regulations, including those adopted by the Port Commission and those adopted by the Executive Director, or the Executive Director's designee.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas; and

1.3.2.6 To transfer ownership of such Common Areas.

## ARTICLE II - TERM

**Section 2.1 - Term:** The term of this Lease shall commence on December 1, 1993, and shall continue through December 30, 1997, unless sooner terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from December 1 through November 30 of each year.

**Section 2.2 - Renewal Option:** If Lessee is not in default under this Lease, and no event has occurred or failed to occur and no condition exists that with or without notice and the passage of time could ripen into such a default, upon the Exercise Date or at the conclusion of the applicable expiring term, Lessee shall have one option to renew this Lease. Such option shall be on the express terms of this section but shall otherwise be on the same terms and conditions except for the establishment of the rent as herein provided. The option shall be for a period of



four years and shall be exercised by notice in writing given to the Port not less than 60 days nor more than 120 days before the last day of the expiring term. The day on which the written notice is given as provided herein shall be the "Exercise Date." Once exercised or lapsed, an option shall be extinguished. Failure to exercise any option in the manner and within the period provided in this Section 2.2 shall extinguish said option and any and all future options.

### **ARTICLE III - RENT**

**Section 3.1 - Rent:** Lessee shall pay in advance to the Port the sum of \$2,954.15 per month as rent based on the following (which rent shall be adjusted if the actual square footage is adjusted per Section 1.1):

3.1.1 **Basic Rent:** Lessee shall pay in advance to the Port the sum of \$1,921.23 per month as rent based on \$9.30 per-square-foot-per-year for the building space (hereinafter "Basic Rent"). Said Basic Rent shall be subject to adjustment in accordance with Section 3.2 of this Lease.

3.1.2 **Operating Charge:** In addition to Basic Rent, Lessee shall pay \$1,032.93 per month based on \$5.00 per-square-foot-per-year (hereinafter "Operating Charge"). Said Operating Charge shall be subject to adjustment in accordance with Section 3.3 of this Lease.

3.1.3 **Security Deposit:** In addition to payments of Basic Rent, Lessee shall deposit with the Port, upon execution of this Lease, the sum of \$3,500.00 as security for Lessee's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest on account of Lessee, shall not be considered to be held in trust for Lessee; shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by Lessee, and, may be commingled with other funds of the Port. If Lessee fails to pay or perform any of its obligations under this Lease as and when due, including without limitation the payment of Basic Rent, the Port may, but shall not be obligated to, use, apply, or retain all or any part of the security deposit to the extent required for the payment of any amount not paid when due or any amount which the Port may expend or incur by reason of Lessee's failure. If the Port so uses, applies, or retains all or any part of the security deposit, Lessee shall upon demand immediately deposit with the Port an amount equal to the amount so used, applied, or retained. If Lessee fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to Lessee within thirty days after the expiration of this Lease and delivery to the Port of possession of the Premises and all payments required to be made by Lessee hereunder. In the event of any sale of the Port's interest in the Premises, the Port shall have the right to transfer the security deposit to the purchaser



thereof and the Port shall thereupon be released by Lessee from all liability for refund of the security deposit. Notwithstanding the above, at the end of the term of this lease, if Lessee is not in default of this lease, and if Lessee elects to take its four-year option, the Port will apply the security deposit rent for the first month of the option period.

**Section 3.2 - Adjustment to Basic Rent:** In accordance with Section 3.3.1 and 3.3.2, on the third Anniversary of the Commencement date of the Lease Term and each third anniversary thereafter through the Lease Term or any Renewal Term (each an "Adjustment Date"), the Basic Rent shall be adjusted for the ensuing period (each an "Adjustment Period"), provided that in no event shall the rental rate be less than the original Basic Rent.

3.2.1 The Basic Rent shall be subject to an adjustment based on the same percentage increase of the "Consumer Price Index - Seasonally Adjusted Portland Average for all Items for All Urban Consumers (1967=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter the "CPI-U"), for the three-year period ending December 30. The Adjustment shall be determined by multiplying the initial Basic Rent by a fraction (that shall not be less than one) the numerator of which is the CPI-U for the last December prior to the Adjustment Date and the denominator of which is the CPI-U for December 1993.

3.2.2 In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted Portland Wage and Salary employment (1977=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor ("CPI-W") shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by the Port shall be used for making the computation.

3.2.3 In the event the CPI-U base year 1967 (or other base year for a substituted index) is changed, the denominator figure used in making the computation in Section 3.2.1 above shall accordingly be changed so that all increases in the CPI-U from the Base Year are taken into account notwithstanding any such change in said CPI-U Base Year.

3.2.4 In no case shall the Basic Rent, as adjusted, be less than the initial Basic Rent as stated in Section 3.1 of this Lease nor less than the adjusted rent in any prior period of the Lease Term or Renewal Term.

**Section 3.3 - Adjustment to Operating Costs:** "Fiscal Year" as used herein shall mean

July 1 to June 30 of any year throughout the term of this Lease or any extensions thereof. At the beginning of each Fiscal Year during the term of this Lease and any renewal or extension thereof, the Operating Cost shall be adjusted to reflect the actual per-square-foot Operating Costs, as defined in Section 3.3.1 herein, of the previous fiscal year. As used herein, "Operating Costs" shall mean all costs of operating and maintaining the Building, as determined by the Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof); all water and sewer charges; the cost of steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses; permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; the annual amortized capital improvement costs (amortized over such a period as the Port may select and at a current market interest rate). In no event shall any decrease in operating costs reduce the Basic Rent.

3.3.1 The "per-square-foot" costs, as used herein shall mean the square footage area of the Premise leased to Lessee, divided by the total leasable square footage area of the Building of which the premises is a part (10,390 square feet).

**Section 3.4 - Time and Place of Payments:**

3.4.1 Lessee shall pay the Port monthly the then prevailing Basic Rent. Payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the month being prorated.

3.4.2 Payment shall be to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by Lessee when due may bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current rate charged on overdue accounts.

**Section 3.5 - Acceptance of Late Rent:** the Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event the Port elects to accept a tender of payment of Basic Rent after the time when such payment is due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby



acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of Basic Rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### **ARTICLE IV - LESSEE'S OTHER OBLIGATIONS**

**Section 4.1 - Construction of Improvements/Alterations:** Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, the Port may require architectural and mechanical final plans and specifications, and/or architectural renderings, and shall not commence any construction until it has received the Port's written approval. Should the Port fail to take action concerning plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to the existing Premises, shall be of such quality and type that, when completed, the value and utility of the Premises which were changed or altered shall be not less than the value and utility of the Premises immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, the Port may require Lessee to deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed by the State of Oregon.

**Section 4.2 - Conduct of Business:** Lessee agrees to continuously during the Lease Term conduct and carry on its business on the Premises open for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond Lessee's reasonable control.

**Section 4.3 - Maintenance:** Except for the items required to be maintained by Port



maintenance responsibilities provided in Section 5.1 herein, Lessee shall keep and maintain the Premises in good and substantial repair and condition, and shall promptly make all necessary repair and alterations thereto at Lessee's sole expense. Such repairs shall be in accordance with Section 4.1 herein. Lessee shall provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at Lessee's expense, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

**Section 4.4 - Taxes:** The Port, on behalf of Lessee, shall pay all real property taxes applicable to the Premises. If the term of the Lease or any extension thereof shall end after June 30 of any year, or if Lessee shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and as such Lessee shall occupy the Premises after June 30 of any year, Lessee shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.1 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, federal government, or any special district or agency upon Lessee. Such taxes shall remain the responsibility of Lessee.

4.4.2 Lessee shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and personal property contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment, and personal property to be assessed and billed separately from the real property of the Port. If any of Lessee's said personal property shall be assessed with the Port's real property, Lessee shall pay the Port the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**Section 4.5 - Liens:** Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that Lessee may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied

during the period of such contest, provided that the Port may require Lessee to procure a payment bond in the amount of the contested lien.

**Section 4.6 - Utilities:** Lessee shall promptly pay any charges for telephone and all other charges for utilities that may be furnished to the Premises at the request of or for the benefit of Lessee, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by the Port.

4.6.1 Lessee shall not, without the Port's consent, operate or install any electrical equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, facsimile or telecopier machine shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to the Port. In no event shall Lessee overload the electrical circuits from which Lessee obtains current.

**Section 4.7 - Advertisement Signs:** Subject to the provisions hereof, Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by Lessee. Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without first having obtained the Port's written consent thereto, which shall not be unreasonably withheld, provided that the Port may condition the installation as to size, construction, location, and general appearance.

**Section 4.8 - Safety Requirements:**

4.8.1 Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

4.8.2 Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Premises adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in



the building.

**Section 4.9 - Access to Premises:** Except as provided in Section 4.9.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.9.1.

4.9.1 **Environmental Inspection:** The Port reserves the right to inspect Lessee's management of Hazardous Substances on the Premises, as defined in Section 6.2, at any time and from time to time without notice to Lessee. If the Port at any time during the term of this Lease or any extension thereof has reason to believe that Lessee is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, the Port may require Lessee to furnish to the Port, at Lessee's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to the Port. In the event the Port determines that contamination is reasonably likely to occur, the Port may require only such protective measures as are reasonably required to prevent contamination.

**Section 4.10 - Hazardous Substances, Spills and Releases:**

4.10.1 Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.10.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. The Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty



days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certificate acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

## **ARTICLE V - PORT OBLIGATIONS AND WARRANTIES**

**Section 5.1 - Port's Warranty of Ownership:** The Port warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to Lessee performing all obligations of this Lease, Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port, and the Port will defend Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

**Section 5.2 - Condition of Premises:** The Port makes no warranties or representations regarding the condition of the Premises. Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to Lessee for any damage or injury caused by the condition of Premises.

**Section 5.3 - Port Maintenance Obligations:** The Port shall maintain the exterior walls, roof, the common areas, utilities, and the HVAC system of the Building, the landscaping immediately surrounding the Building, and provide janitorial service for the common areas.

**Section 5.4 - Port Construction Obligation:** The Port will construct or install the following improvements: Lower wall between rooms 231 and 235, open hallway, add wall to make rooms 234 and 230, remove storage room 233, take down divider between room 231 and hallway and add approximately 6 feet to office on west side. Work shall include all electrical, carpentry work, etc. The Port allows Lessee a budget of \$8,000 to complete the improvements. Any cost above that amount shall be to the account of Lessee.

## **ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION**

**Section 6.1 - General Indemnity:** Lessee covenants and agrees to indemnify, save and hold harmless, the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of actions (collectively "Costs") which may be imposed upon or incurred by the Port due

to the acts or omissions of any person or entity whatsoever (excluding only the willful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) results from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

**Section 6.2 - Hazardous Materials Indemnity:** In addition to the indemnity provided in Section 6.1 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all costs (as defined below) incurred by the Port or assessed against the Port by reason of Lessee's violation of Environmental Laws (as defined below) As used in this Section 6.2:

6.2.1 **Costs:** Costs shall include, but not be limited to: (a) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) all expenses of evaluation, testing, and analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegal and experts; (d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (e) any and all expenses or obligations, including attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone charges and other expenses; and (f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

6.2.2 **Environmental Laws:** Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules and ordinances now or hereafter in effect applicable to the Premises, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et seq.); the Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. §3251, et seq.); the Federal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the



Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); treatment, storage and disposal of hazardous waste and PCBs (ORS 466.005 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

6.2.3 **Hazardous Substances:** Hazardous Substances shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

6.2.4 Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises, at its own cost and expense, all Hazardous Substances placed on the Premises by Lessee in violation of environmental laws, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port by reason of Lessee's violation of environmental laws shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies Lessee. Lessee's obligations under this Section shall not extend to Hazardous Substances in existence on the Premises prior to the commencement date of this Lease.

6.2.5 Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.1 and 6.2 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any



such action or proceeding.

**Section 6.3 - Insurance:**

6.3.1 Lessee shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of \$5,000,000 and automobile liability insurance with a minimum combined single limit of \$1,000,000 for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee on or from the Premises. Lessee shall also maintain fire legal liability insurance for the duration of this Lease.

6.3.2 Lessee shall maintain business interruption insurance equal to its fixed financial obligations, including rental payments to the Port for a period of six months. The amount of this coverage will be reevaluated with the Port on a yearly basis. The proceeds of any business interruption insurance shall be used first to continue payments to the Port.

6.3.3 Lessee shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability.

6.3.4 All insurance shall name the Port, its commissioners, officers, agents, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by Lessee.

6.3.4 The certificate provided to the Port shall, at a minimum, evidence the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than thirty days' written notice to the Port and Lessee before such policies may be revised, nonrenewed, or cancelled. Upon request, Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.3.5 The Port shall have the right to review the limits of insurance required herein at the end of each three-year interval of this Lease. In the event the Port determines that such limits and/or coverage should be modified, the Port will provide notice to Lessee of such determination and Lessee shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide the Port with an updated certificate.

**Section 6.4 - Waiver of Subrogation:** Except as limited in this Section 6.4, the Port and

Lessee agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which that party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

**Section 6.5 - Damage or Destruction of Premises:**

6.5.1 If the Premises are totally or partially destroyed by fire or any other cause, the Port shall have the option and shall within 60 days from the damage or destruction, notify Lessee in writing whether or not the Port elects to repair, rebuild, restore the Premises or terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice. The Port shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that Lessee shall be entitled to the insurance proceeds from its own insurance for damage done to Lessee's personal property within the Premises.

6.5.2 Abatement or Reduction of Rent: In case of destruction or damage followed by restoration, there shall be a prorated abatement or reduction of the rent between the date of destruction and the date of substantial completion of restoration or use of Premises, whichever is sooner, based on the extent to which the destruction interferes with Lessee's use of the Premises, provided that such abatement or reduction of rent shall be for no longer than is reasonably necessary to repair, rebuild, or restore the Premises in the most expeditious manner reasonably possible.

**ARTICLE VII - TERMINATION**

**Section 7.1 - Termination by The Port:** The Port shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

**Section 7.2 - Termination by Lessee:** Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

**Section 7.3 - Duties on Termination:** Upon termination of the Lease or termination of possession for any reason, Lessee shall deliver all keys to the Port and surrender the Premises and



Improvements in good condition subject to wear and tear, damage by fire or other casualty, and repairs required to be completed by the Port. Alterations constructed by Lessee with permission from the Port shall not be removed but shall be restored to the original condition, unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Lessee is responsible shall be completed to the latest practical date prior to such surrender.

**Section 7.4 - Title to Improvements:** Subject to the provisions of Section 7.5, upon termination of this Lease or possession under this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of all Improvements within ninety days after the expiration of the Lease at Lessee's expense or shall have the option to take title to such structures, installations, and improvements installed by Lessee.

**Section 7.5 - Fixtures:**

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any and all of Lessee's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Lessee's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 The time for removal of any property or fixtures which Lessee is required to remove from the Premises upon termination shall be on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default.

**Section 7.6 - Holding Over:** If Lessee shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with the Port



upon the terms and provisions of a new lease prior to such expiration, at the Port's discretion, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance, the monthly rent to continue as originally established; (2) title to Improvements shall have vested in the Port pursuant to Section 7.4 hereof; (3) the Port shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to Lessee; and (4) such month-to-month tenancy may be terminated at any time by written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if Lessee is in possession of Premises after June 30 of any year, Lessee shall be responsible for payment of property taxes for the balance of the year in which the property is not leased.

#### **ARTICLE VIII - DEFAULT**

##### **Section 8.1 - Events of Default:** The following shall be events of default:

8.1.1 **Default in Rent:** Failure of Lessee to pay any rent or other charge as provided herein within ten days after it is due. Lessee's liability to the Port for default shall survive termination of this Lease.

8.1.2 **Default in Other Covenants:** Failure of Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day period, this provision shall be complied with if Lessee begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 **Insolvency:** To the extent permitted by the United States Bankruptcy Code, insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 **Failure to Occupy:** Failure of Lessee for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

**Section 8.2 - Remedies on Default:**

8.2.1 In the event of a default under the provisions of Sections 8.1.1, 8.1.2, 8.1.3, and 8.1.4, the Port at its option may terminate this Lease or possession of the Premises under this Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by the Port, from time to time, at the Port's election, and nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are non-exclusive.

**ARTICLE IX - GENERAL PROVISIONS**

**Section 9.1 - Assignment and Sublease:**

9.1.1 This Lease is personal to the Port and Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment the Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. The Port may require increased rental to compensate for additional value prior to consent.



**Section 9.2 - Nonwaiver:** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**Section 9.3 - Adherence to Law:** Lessee shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; (3) all federal, state, regional and local environmental laws; and (4) all ordinances and rules adopted by the Port Commission and all rules and regulations adopted by the Port's Executive Director or the Executive Director's designee.

9.3.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 Lessee shall promptly provide to the Port copies of all notices or other communications between Lessee and any governmental entity which relate to Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over Lessee's use of the Premises.

9.3.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

9.3.4 Any subleases approved by the Port as provided in this Lease shall contain a provision substantially similar to the terms of this Section 9.4 or incorporating such terms into the sublease.

**Section 9.4 - Law of Oregon:** This Lease shall be governed by the laws of the State of



Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

**Section 9.5 - No Benefit to Third Parties:** The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**Section 9.6 - Consent of Port:**

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the Executive Director of the Port of Portland or his designee.

9.6.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

**Section 9.7 - Vacation:** Upon vacation or abandonment of the Premises by Lessee prior to the expiration of the Lease Term without written consent of the Port, the Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release Lessee from the obligations herein, but Lessee shall nevertheless remain liable and continue to be bound, unless the Port, at the Port's election, shall cancel the Lease. Cancellation shall be effected and the Port and Lessee released from all obligations under this Lease, upon the mailing of such notice of cancellation by the Port to Lessee at Lessee's last known address, provided that Lessee shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in the Port.

**Section 9.8 - Notices:** All notices required under this Lease shall be deemed to be

properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to Lessee at Sause Bros. Ocean Towing co., Inc., 3556 NW Front St., Portland, OR 97210. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

**Section 9.9 - Time of the Essence:** Time is of the essence of each and every covenant and condition of this Lease.

**Section 9.10 - Survival:** All covenants and conditions (including but not limited to indemnification agreements), set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**Section 9.11 - Partial Invalidity:** If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 9.12 - No Light or Air Easement:** The reduction or elimination of Lessee's light, air, or view will not affect Lessee's liability under this Lease, nor will it create any liability of the Port to Lessee.

**Section 9.13 - Force Majeure:** If by reason of force majeure the Port and/or Lessee is unable in whole or in part to carry out its obligations under this Lease, neither party shall not be deemed in default during the continuance of such inability, provided written notice thereof is given to the other party. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders or restraints of the United States of America or the State of Oregon, or their respective departments, agencies, or officials, or any civil or military authority; insurrections; riots; or any other cause or event not reasonably within the control of the Port or Lessee and not resulting from its negligence.



**Section 9.14 - Headings:** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

**Section 9.15 - Rules and Regulations:** The Port may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of the Premises and contiguous property owned by the Port, which Lessee agrees to observe and obey.

**Section 9.16 - Modification:** Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto.

**Section 9.17 - Warranty of Authority:** The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

**Section 9.18 - Attorney's Fees:** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

**Section 9.19 - Absence of Brokers:** Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

**Section 9.20 - Dispute Resolution:** Should any dispute arise between the parties to this Lease other than a dispute regarding (1) the failure to pay rent or other payments as required by this Lease, (2) possession, or (3) an adjustment of the Basic Rent which shall be determined in accordance with Section 3.2, it is agreed that such dispute will be submitted to a mediator prior to any arbitration or litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon,



**Section 9.21 - Entire Agreement:** It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by Lessee.

[illegible]

IN WITNESS HEREOF, the parties have subscribed their names hereto this 13<sup>th</sup>  
day of DECEMBER 1993.

SAUSE BROS. OCEAN-TOWING CO.,  
INC.

THE PORT OF PORTLAND

By: Matt Hainley  
Matt Hainley, Controller

By: Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

P. 24 MISSING  
AS OF 1/30/08  
Jmoore

By: Paul C. Elsner  
Paul C. Elsner, Assistant General Counsel  
for The Port of Portland

APPROVED BY COMMISSION ON:

DEC. 8, 1993

December 1, 1993  
SauseT2Lease

93-164

AMENDMENT NO. 1  
TO  
LEASE  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND

This Amendment No. 1 ("Amendment") dated as of the 4th day of Nov, 1997, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

RECITALS

- A. The Port and Sause entered into an Office Lease effective December 13, 1993, Port Agreement No. 93-164 (the "Agreement"). The parties now wish to amend the Agreement.
- B. NOW THEREFORE, based on the foregoing, the Port and Sause agree as follows.

AGREEMENT

1. SECTION 2.1

Section 2.1 shall be deleted in its entirety and replaced with the following:

**Section 2.1 - Term:** The term of this Lease shall commence on December 1, 1993, and shall continue through and including March 31, 1998, unless sooner terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from December 1 through November 30 of each year.

2. CAPITALIZED TERMS

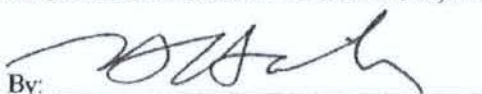
Capitalized terms used but not otherwise defined herein shall have the same meanings as in the Agreement.

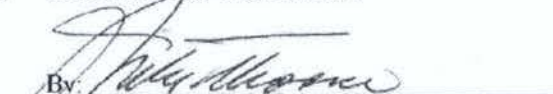
3. OTHER TERMS

Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

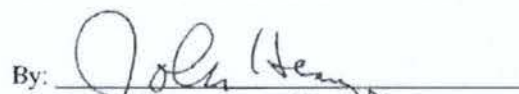
SAUSE BROS. OCEAN TOWING CO., INC.

THE PORT OF PORTLAND

By:   
Matt Hainley, Controller

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for the Port of Portland



**AMENDMENT NO. 2  
TO  
LEASE  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND**

This Amendment No. 2 to Lease ("Amendment") dated as of the 6th day of Feb, 1998, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Sause entered into a Lease dated December 13, 1993 (Port Agreement No. 93-164), as amended by Amendment No. 1 dated November 4, 1997 (as amended, the "Agreement").

B. The parties now wish to further amend the Agreement to extend the term as provided for herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree that the Agreement is amended as follows:

**AMENDMENT**

**1. TERM**

The term of the Agreement shall be extended through and including June 30, 1998, unless sooner terminated as permitted under the Agreement; provided that Sause may terminate the Agreement prior to June 30, 1998, by giving the Port not less than thirty (30) days advance written notice.

**2. RENEWAL OPTION**

The third sentence of Section 2.2 is amended to read as follows:

"The option shall be for a period of approximately four years ending November 30, 2002, and shall be exercised by notice in writing given to the Port on or prior to June 1, 1998."

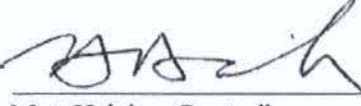
**3. DEFINITIONS**

Capitalized terms used but not otherwise defined herein shall have the same meanings as in the Agreement.

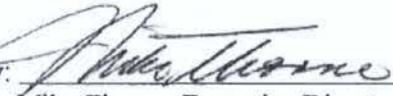
**4. EFFECT ON AGREEMENT**

Except as expressly amended hereby, all other terms of the Agreement shall remain in full force and effect.

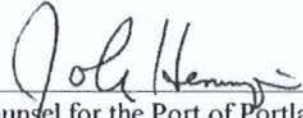
SAUSE BROS. OCEAN TOWING CO.,  
INC.

By:   
Matt Hainley, Controller

THE PORT OF PORTLAND

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for the Port of Portland

94-049

**LEASE AGREEMENT  
BETWEEN  
NATIONAL CARGO BUREAU, INC.  
AND  
THE PORT OF PORTLAND**



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## LEASE

THIS LEASE dated this 14<sup>th</sup> day of April, 1994, is entered into by and between NATIONAL CARGO BUREAU, INC., a corporation duly organized under the laws of the State of New York (hereinafter referred to as Lessee) and the PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as the Port).

## RECITALS

The Port desires to lease certain office space located in the Terminal 2 Administration Building to Lessee, said office space being more particularly described below; and

Lessee is desirous of leasing said office space;

The parties intending to be legally bound by the terms and conditions contained in this document, and in consideration of the above declarations, the parties have negotiated the following terms and conditions:

## ARTICLE I - PREMISES

**Section 1.1 - Description of Premises:** The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated below, approximately 660 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. T2 LP/0026, attached hereto as Exhibit "A" and made a part hereof, and any existing improvements thereon and appurtenances thereto (hereinafter referred to as Premises). Upon construction or installation of any additional improvements approved by the Port as provided herein, in, under, or upon the Premises, including without limitation any buildings, roads, driveways, parking areas, landscaped areas, pipes, fences, walls, sidewalks, stairs, tanks, paved areas, utility distribution facilities, or signs (collectively, together with existing improvements, the "Improvements"), such Improvement(s) shall become a part of the Premises except to the extent specifically excluded under the terms of this Lease.

**Section 1.2 - Use of Premises:** Lessee may use the Premises only for the following purposes: office space.

1.2.1 No other use may be made of the Premises without the written approval of the Port. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, without limiting the foregoing restriction on use, no



use may be made of, on, or from the Premises relating to the handling, generation, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.2 hereof. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.2 hereof.

1.2.2 Lessee shall not use or permit in or on the Premises, the building or any related property, anything that shall increase the rate of fire insurance thereon or prevent the Port taking advantage of any ruling of the Insurance Services Office of Oregon or its successors, that would allow the Port to obtain reduced rates for long-term insurance policies; or maintain anything that may be dangerous to life or limb; or in any manner deface or injure said building or any portion thereof; or overload the floors; or permit any objectionable noise or odor to escape or to be emitted from the Premises; or permit anything to be done upon the Premises in any way tending to create a nuisance or to disturb any other tenants of the building; or to use or permit the use of said Premises for lodging or sleeping purposes or for any illegal purposes, and that Lessee shall comply at Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

**Section 1.3 - Appurtenant Rights:** Lessee shall, during the term hereof, have the appurtenant rights specified in Subsection 1.3.1 below. No other appurtenant rights shall be implied as a part of this Lease. Nothing stated herein shall be construed as to limit in any way the general power and right of the Port to exercise its governmental powers in any way, including such as may affect the Premises, Common Areas, or any other area under the jurisdiction of the Port.

1.3.1 Lessee, its customers, agents, representatives, and invitees shall have the non-exclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean any parking areas, roadways, driveways, sidewalks, landscaped areas, security areas, trash removal areas, delivery areas, washrooms, and any other areas owned by the Port within Terminal 2 where such areas have been designated by the Port as areas to be used by the general public, by the business invitees, by tenants in common with other tenants, or by general public in common with tenants provided that nothing stated in this Lease shall prohibit the Port from barring from Port property any person or entity which fails to comply with applicable laws, ordinances and rules and regulations, including those adopted by the Port Commission and those

adopted by the Executive Director, or the Executive Director's designee.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas; and

1.3.2.6 To transfer ownership of such Common Areas.

## ARTICLE II - TERM

**Section 2.1 - Term:** The term of this Lease shall commence on May 15, 1994, and shall continue through May 30, 1999, unless sooner terminated under the provisions herein. As used herein, "Lease Year" shall mean the period from June 1 through May 30 of each year.

**Section 2.2 - Renewal Option:** If Lessee is not in default under this Lease, and no event has occurred or failed to occur and no condition exists that with or without notice and the passage of time could ripen into such a default, upon the Exercise Date or at the conclusion of the applicable expiring term, Lessee shall one option to renew this Lease. Such options shall be on the express terms of this section but shall otherwise be on the same terms and conditions except for the establishment of the rent as herein provided. The option shall be for a period five years and shall be exercised by notice in writing given to the Port not less than 60 days nor more than 120 days before the last day of the expiring term. The day on which the written notice is given as provided herein shall be the "Exercise Date." Once exercised or lapsed, an option shall be extinguished. Failure to exercise any option in the manner and within the period provided in this Section 2.2 shall extinguish said option and any and all future options.

## ARTICLE III - RENT



**Section 3.1 - Rent:** Lessee shall pay in advance to the Port the sum of \$859.00 per month as rent based on the following:

3.1.1 **Basic Rent:** Lessee shall pay in advance to the Port the sum of \$511.50 per month as rent based on \$9.30 per-square-foot-per-year for the building space (hereinafter "Basic Rent"). Said Basic Rent shall be subject to adjustment in accordance with Section 3.2 of this Lease.

3.1.2 **Operating Charge:** In addition to Basic Rent, Lessee shall pay \$275.00 per month based on \$5.00 per-square-foot-per-year (hereinafter "Operating Charge"). Said Operating Charge shall be subject to adjustment in accordance with Section 3.3 of this Lease.

3.1.3 **Additional Rent:** Lessee shall pay to the Port \$72.50 per month as additional rent (hereinafter "Additional Rent") for improvements the Port will provide to the Premises as described in Section 5.3 herein, based on a cost of \$4,350.00 divided into 60 equal payments.

3.1.4 **Security Deposit:** In addition to payments of Basic Rent, Lessee shall deposit with the Port, upon execution of this Lease, the sum of \$786.50 security for Lessee's full and faithful performance and observance of its obligations under this Lease. Such security deposit shall not earn interest on account of Lessee, shall not be considered to be held in trust for Lessee; shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by Lessee, and, may be commingled with other funds of the Port. If Lessee fails to pay or perform any of its obligations under this Lease as and when due, including without limitation the payment of Basic Rent, the Port may, but shall not be obligated to, use, apply, or retain all or any part of the security deposit to the extent required for the payment of any amount not paid when due or any amount which the Port may expend or incur by reason of Lessee's failure. If the Port so uses, applies, or retains all or any part of the security deposit, Lessee shall upon demand immediately deposit with the Port an amount equal to the amount so used, applied, or retained. If Lessee fully and faithfully performs and observes all of its obligations under this Lease, the security deposit or any balance thereof shall be refunded to Lessee within thirty days after the expiration of this Lease and delivery to the Port of possession of the Premises and all payments required to be made by Lessee hereunder. In the event of any sale of the Port's interest in the Premises, the Port shall have the right to transfer the security deposit to the purchaser thereof and the Port shall thereupon be released by Lessee from all liability for refund of the security deposit.

**Section 3.2 - Adjustment to Basic Rent:** In accordance with Section 3.3.1 and 3.3.2, on the third Anniversary of the Commencement date of the Lease Term and each third anniversary



thereafter through the Lease Term or any Renewal Term (each an "Adjustment Date"), the Basic Rent shall be adjusted for the ensuing period (each an "Adjustment Period"), provided that in no event shall the rental rate be less than the original Basic Rent.

3.3.1 The Basic Rent shall be subject to an adjustment based on the same percentage increase of the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for All Urban Consumers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter the "CPI-U"), for the three-year period ending December 31, 1997. The Adjustment shall be determined by multiplying the initial Basic Rent by a fraction (that shall not be less than one) the numerator of which is the CPI-U for December prior to the beginning of the Adjustment Date and the denominator of which is the CPI-U for December three years later, but in no event shall the adjustment be greater than 5 percent for the first adjustment period.

3.3.2 In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor ("CPI-W") shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by the Port shall be used for making the computation.

3.3.3 In the event the CPI-U base year 1982-84 (or other base year for a substituted index) is changed, the denominator figure used in making the computation in Section 3.3.1 above shall accordingly be changed so that all increases in the CPI-U from the Base Year are taken into account notwithstanding any such change in said CPI-U Base Year.

3.3.4 In no case shall the Basic Rent, as adjusted, be less than the initial Basic Rent as stated in Section 3.1 of this Lease nor less than the adjusted rent in any prior period of the Lease Term or Renewal Term.

3.2.4 For the option Term, should Lessee elect to continue this Lease, the Basic Rent shall continue to be adjusted every three years as calculated above.

**Section 3.3 - Adjustment to Operating Costs:** "Fiscal Year" as used herein shall mean July 1 to June 30 of any year throughout the term of this Lease or any extensions thereof. At the beginning of each Fiscal Year during the term of this Lease and any renewal or extension thereof, the Operating Cost shall be adjusted to reflect the actual per-square-foot Operating Costs, as defined in Section 3.3.1 herein, of the previous fiscal year. As used herein, "Operating Costs"

shall mean all costs of operating and maintaining the Building, as determined by the Port, including, but not limited to: real property taxes levied against the Building and its underlying land (and any tax levied wholly or partially in lieu thereof); all water and sewer charges; the cost of steam, natural gas, electricity provided to the Building; janitorial and cleaning supplies and services; garbage removal service; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses; permits for the operation and maintenance of the Building and all of its component elements and mechanical systems. In no event shall any decrease in operating costs reduce the Basic Rent.

3.3.1 The "per-square-foot" costs, as used herein shall mean the square footage area of the Premise leased to Lessee, divided by the total leasable square footage area of the Building of which the premises is a part (8,371 square feet).

**Section 3.4 - Time and Place of Payments:**

3.4.1 Lessee shall pay the Port monthly the then prevailing Basic Rent. Payments are due on the first day of each month and delinquent if not paid when due. In the event the Lease commences after the first day of a month, the rent for the first month shall be prorated on the basis of the number of days in the month being prorated.

3.4.2 Payment shall be to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by Lessee when due may bear a delinquency charge at the rate of 18 percent per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current rate charged on overdue accounts.

**Section 3.5 - Acceptance of Late Rent:** the Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent which is not paid when due. In the event the Port elects to accept a tender of payment of Basic Rent after the time when such payment is due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of Basic Rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

**ARTICLE IV - LESSEE'S OTHER OBLIGATIONS**



**Section 4.1 - Construction of Improvements/Alterations:** Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, the Port may require architectural and mechanical final plans and specifications, and/or architectural renderings, and shall not commence any construction until it has received the Port's written approval. Should the Port fail to take action concerning plans and/or specifications submitted to it within forty-five days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to the existing Premises, shall be of such quality and type that, when completed, the value and utility of the Premises which were changed or altered shall be not less than the value and utility of the Premises immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, the Port may require Lessee to deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect licensed by the State of Oregon.

**Section 4.2 - Conduct of Business:** Lessee agrees to continuously during the Lease Term conduct and carry on its business on the Premises open for business and cause such business to be conducted therein each and every business day generally observed by like businesses, except for acts of God, labor disputes, or other causes beyond Lessee's reasonable control.

**Section 4.3 - Maintenance:** Except for the items required to be maintained by Port maintenance responsibilities provided in Section 5.1 herein, Lessee shall keep and maintain the Premises in good and substantial repair and condition, and shall promptly make all necessary repair and alterations thereto at Lessee's sole expense. Such repairs shall be in accordance with Section 4.1 herein. Lessee shall provide proper containers for trash and garbage, shall provide for the removal of trash and garbage at Lessee's expense, and shall keep the Premises free and clear of rubbish, debris, and litter at all times.



**Section 4.4 - Taxes:** The Port, on behalf of Lessee, shall pay all real property taxes applicable to the Premises. If the term of the Lease or any extension thereof shall end after June 30 of any year, or if Lessee shall hold over its occupancy of the Premises after the expiration of the term of this Lease as provided herein, and as such Lessee shall occupy the Premises after June 30 of any year, Lessee shall be liable for payment of real property taxes applicable to the Premises for the year in which said holdover occurs with no proration.

4.4.1 As used herein, the term "real property tax" shall not include business license fees, excise taxes, sales taxes, corporation taxes, income taxes, or any tax on personal property which may be imposed by any city, county, state, federal government, or any special district or agency. Such taxes shall remain the responsibility of Lessee.

4.4.2 Lessee shall pay before delinquency, all other taxes and fees assessed against and levied upon its trade fixtures, equipment, furnishings, and personal property contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment, and personal property to be assessed and billed separately from the real property of the Port. If any of Lessee's said personal property shall be assessed with the Port's real property, Lessee shall pay the Port the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**Section 4.5 - Liens:** Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanics', materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that Lessee may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require Lessee to procure a payment bond in the amount of the contested lien.

**Section 4.6 - Utilities:** Lessee shall promptly pay any charges for telephone and all other charges for utilities that may be furnished to the Premises at the request of or for the benefit of Lessee, except for lighting, heating, natural gas, water, sanitary sewer, storm drainage, air conditioning and electrical service which shall be provided by the Port.

4.6.1 Lessee shall not, without the Port's consent, operate or install any electrical

equipment or operate or install any machinery or mechanical device on said premises other than that normal to office use. No electric wiring, satellite, or cable receiving equipment, electronic transmitting devices, other than telephone, telex, facsimile or telecopier machine shall be installed, maintained or operated on said premises except with the approval of and in a manner satisfactory to the Port. In no event shall Lessee overload the electrical circuits from which Lessee obtains current.

**Section 4.7 - Advertisement Signs:** Subject to the provisions hereof, Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost of such installations and operation thereof shall be borne by Lessee. Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without first having obtained the Port's written consent thereto, which shall not be unreasonably withheld, provided that the Port may condition the installation as to size, construction, location, and general appearance.

**Section 4.8 - Safety Requirements:**

4.8.1 Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

4.8.2 Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises. The Port shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Premises adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in the building.

**Section 4.9 - Access to Premises:** Except as provided in Section 4.9.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.9.1.



4.9.1 Environmental Inspection: The Port reserves the right to inspect Lessee's management of Hazardous Substances on the Premises, as defined in Section 6.2, at any time and from time to time without notice to Lessee. If the Port at any time during the term of this Lease or any extension thereof has reason to believe that Lessee is managing Hazardous Substances in a manner that may reasonably be determined to cause contamination of any portion of the Premises, the Port may require Lessee to furnish to the Port, at Lessee's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to the Port. In the event the Port determines that contamination is reasonably likely to occur, the Port may require only such protective measures as are reasonably required to prevent contamination.

**Section 4.10 - Hazardous Substances, Spills and Releases:**

4.10.1 Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.2, on, under, or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Premises or activities on the Premises.

4.10.2 In the event of a leak, spill, or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substance is eliminated. The Port shall have the right to approve all investigatory, remedial, and removal procedures and the company(ies) and/or individuals conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certificate acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

**ARTICLE V - PORT OBLIGATIONS AND WARRANTIES**

**Section 5.1 - Port's Warranty of Ownership:** The Port warrants that it is the owner of the Premises and has the right to lease said Premises under the terms of this Lease. Subject to Lessee performing all obligations of this Lease, Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port, and the Port will defend Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully



claiming by, through or under the Port.

**Section 5.2 - Condition of Premises:** The Port makes no warranties or representations regarding the condition of the Premises. Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to Lessee for any damage or injury caused by the condition of Premises.

**Section 5.3 - Port Maintenance Obligations:** The Port shall maintain the exterior walls, roof, the common areas, plumbing, and the HVAC system of the Building, the landscaping immediately surrounding the Building, and provide janitorial service for the common areas.

**Section 5.4 - Port Construction Obligation:** The Port will construct or install two interior offices to the premises, including any equipment, installations, fixtures, or other improvements required as described in Port Drawing T-2 94-4 1/2 and attached hereto as Exhibit B, which construction and installation shall be completed as soon as practicable after approval of this Lease by the Port of Portland Commission.

## **ARTICLE VI - INDEMNITY, INSURANCE, AND DAMAGE AND DESTRUCTION**

**Section 6.1 - General Indemnity:** Lessee covenants and agrees to indemnify, save and hold harmless, the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of actions (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only the willful acts or negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) results from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

**Section 6.2 - Hazardous Materials Indemnity:** In addition to the indemnity provided in Section 6.1 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below) As used in this Section 6.2:

6.2.1 **Costs:** Costs shall include, but not be limited to: (a) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (b) the

cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) all expenses of evaluation, testing, and analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegal and experts; (d) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (e) any and all expenses or obligations, including attorney and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorney and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone charges and other expenses; and (f) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

**6.2.2 Environmental Laws:** Environmental Laws shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et seq.); the Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. §3251, et seq.); the Federal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et seq.); the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. §2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); treatment, storage and disposal of hazardous waste and PCBs (ORS 466.005 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules and ordinances.

**6.2.3 Hazardous Substances:** Hazardous Substances shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated



substances, or contaminants as are defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

6.2.4 Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises, (including without limitation the soil or water table thereof), at its own cost and expense, all Hazardous Substances, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies Lessee. As used in this Paragraph, "Premises" shall be deemed to include the soil and water table thereof.

6.2.5 Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.1 and 6.2 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

### **Section 6.3 - Insurance:**

6.3.1 Lessee shall maintain an occurrence form commercial general liability insurance policy or policies with a minimum combined single limit of \$1,000,000 and automobile liability insurance with a minimum combined single limit of \$1,000,000 for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee on or from the Premises. Lessee shall also maintain fire legal liability insurance for the duration of this Lease.

6.3.3 Lessee shall maintain in force Workers' Compensation insurance or self-insurance, including coverage for Employer's Liability.

6.3.4 All insurance shall name the Port, its commissioners, officers, agents, and employees as additional insureds with the stipulation that this insurance, as to the interest of the



Port only therein, shall not be invalidated by any act or neglect or breach of contract by Lessee.

6.3.4 The certificate provided to the Port shall, at a minimum, evidence the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than thirty days' written notice to the Port and Lessee before such policies may be revised, nonrenewed, or cancelled. Upon request, Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.3.5 The Port shall have the right to review the limits and coverage of insurance required herein at the end of each three-year interval of this Lease. In the event the Port determines that such limits and/or coverage should be modified, the Port will provide notice to Lessee of such determination and Lessee shall, if the limits and/or coverage are changed, modify its limits and/or coverage to comply with the new limits and/or coverage and provide the Port with an updated certificate.

**Section 6.4 - Waiver of Subrogation:** Except as limited in this Section 6.4, the Port and Lessee agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which that party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

**Section 6.5 - Damage or Destruction of Premises:**

6.5.1 If the Premises are totally or partially destroyed by fire or any other cause, the Port shall have the option and shall within 60 days from the damage or destruction, notify Lessee in writing whether or not the Port elects to repair, rebuild, restore the Premises or terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice. The Port shall be entitled to all proceeds of insurance payable because of the damage or destruction to the Premises, except that Lessee shall be entitled to the insurance proceeds from its own insurance for damage done to Lessee's personal property within the Premises.

6.5.2 **Abatement or Reduction of Rent:** In case of destruction or damage followed by restoration, there shall be a prorated abatement or reduction of the rent between the date of destruction and the date of substantial completion of restoration or use of Premises, whichever is sooner, based on the extent to which the destruction interferes with Lessee's use of

the Premises, provided that such abatement or reduction of rent shall be for no longer than is reasonably necessary to repair, rebuild, or restore the Premises in the most expeditious manner reasonably possible.

## **ARTICLE VII - TERMINATION**

**Section 7.1 - Termination by The Port:** The Port shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

**Section 7.2 - Termination by Lessee:** Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

**Section 7.3 - Duties on Termination:** Upon termination of the Lease or termination of possession for any reason, Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations constructed by Lessee with permission from the Port shall not be removed but shall be restored to the original condition, unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which Lessee is responsible shall be completed to the latest practical date prior to such surrender.

**Section 7.4 - Title to Improvements:** Subject to the provisions of Section 7.5, upon termination of this Lease or possession under this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of all Improvements Lessee may install (exclusive of initial installation work) within ninety days after the expiration of the Lease at Lessee's expense or shall have the option to take title to such structures, installations, and improvements.

### **Section 7.5 - Fixtures:**

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term, or any extension thereof, other than Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any and all of Lessee's property required to be removed under the



terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Lessee's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 If the Port so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of the Port, and shall repair any physical damage resulting from the removal.

7.5.3 The time for removal of any property or fixtures which Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates because of expiration of the original or a renewal term or because of default; or (2) within thirty days after notice from the Port requiring such removal where the property to be removed is a fixture which Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which Lessee would be required to remove other property.

**Section 7.6 - Holding Over:** If Lessee shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, at the Port's discretion, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the payment of all rent in advance, the monthly rent to continue as originally established; (2) title to Improvements shall have vested in the Port pursuant to Section 7.4 hereof; (3) the Port shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to Lessee; and (4) such month-to-month tenancy may be terminated at any time by written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to exercise any rights pursuant thereto. In the event of holdover, if Lessee is in possession of Premises after June 30 of any year, Lessee shall be responsible for payment of property taxes for the entire tax year without proration.

## **ARTICLE VIII - DEFAULT**

**Section 8.1 - Events of Default:** The following shall be events of default:



8.1.1 **Default in Rent:** Failure of Lessee to pay any rent or other charge as provided herein within ten days after it is due. Lessee's liability to the Port for default shall survive termination of this Lease.

8.1.2 **Default in Other Covenants:** Failure of Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty-day period, this provision shall be complied with if Lessee begins correction of the default within the thirty-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 **Insolvency:** To the extent permitted by the United States Bankruptcy Code, insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 **Failure to Occupy:** Failure of Lessee for thirty days or more to occupy the property for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

#### **Section 8.2 - Remedies on Default:**

8.2.1 In the event of a default under the provisions of Sections 8.1.1, 8.1.2, 8.1.3, and 8.1.4, the Port at its option may terminate this Lease or possession of the Premises under this Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by the Port, from time to time, at the Port's election, and nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not

preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are non-exclusive.

## **ARTICLE IX - GENERAL PROVISIONS**

### **Section 9.1 - Assignment and Sublease:**

9.1.1 This Lease is personal to the Port and Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease or assignment the Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. The Port may require increased rental to compensate for additional value prior to consent.

**Section 9.2 - Nonwaiver:** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**Section 9.3 - Adherence to Law:** Lessee shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to: (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Workers' Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health; (3) all federal, state, regional and local environmental laws; and (4) all ordinances and rules adopted by the Port Commission and all rules and regulations adopted by the Port's Executive Director or the Executive Director's designee.

9.3.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any



condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.3.2 Lessee shall promptly provide to the Port copies of all notices or other communications between Lessee and any governmental entity which relate to Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over Lessee's use of the Premises.

9.3.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

9.3.4 Any subleases approved by the Port as provided in this Lease shall contain a provision substantially similar to the terms of this Section 9.4 or incorporating such terms into the sublease.

**Section 9.4 - Law of Oregon:** This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

**Section 9.5 - No Benefit to Third Parties:** The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**Section 9.6 - Consent of Port:**

9.6.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the Executive Director of the Port of Portland or his designee.

9.6.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended Lessee's sole remedy shall be an action for specific performance or injunction, and that such



remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

**Section 9.7 - Vacation:** Upon vacation or abandonment of the Premises by Lessee prior to the expiration of the Lease Term without written consent of the Port, the Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. Such entry and control shall not release Lessee from the obligations herein, but Lessee shall nevertheless remain liable and continue to be bound, unless the Port, at the Port's election, shall cancel the Lease. Cancellation shall be effected and the Port and Lessee released from all obligations under this Lease, upon the mailing of such notice of cancellation by the Port to Lessee at Lessee's last known address, provided that Lessee shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, title to all Improvements shall automatically be vested in the Port.

**Section 9.8 - Notices:** All notices required under this Lease shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, and to Lessee at National Cargo Bureau Inc., 3556 NW Front Avenue, Portland, OR 97210. Date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

**Section 9.9 - Time of the Essence:** Time is of the essence of each and every covenant and condition of this Lease.

**Section 9.10 - Survival:** All covenants and conditions (including but not limited to indemnification agreements), set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, and all covenants and conditions which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

**Section 9.11 - Partial Invalidity:** If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other

than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 9.12 - No Light or Air Easement:** The reduction or elimination of Lessee's light, air, or view will not affect Lessee's liability under this Lease, nor will it create any liability of the Port to Lessee.

**Section 9.13 - Force Majeure:** If by reason of force majeure the Port or Lessee is unable in whole or in part to carry out its obligations under this Lease, the Port or Lessee shall not be deemed in default during the continuance of such inability, provided written notice thereof is given to the other party. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders or restraints of the United States of America or the State of Oregon, or their respective departments, agencies, or officials, or any civil or military authority; insurrections; riots; or any other cause or event not reasonably within the control of the Port or Lessee and not resulting from its negligence.

**Section 9.14 - Headings:** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

**Section 9.15 - Rules and Regulations:** The Port may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of the Premises and contiguous property owned by the Port, which Lessee agrees to observe and obey.

**Section 9.16 - Modification:** Any modification of the Lease shall be mutually agreed upon and reduced to writing and signed by the parties hereto.

**Section 9.17 - Warranty of Authority:** The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

**Section 9.18 - Attorney's Fees:** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.



**Section 9.19 - Absence of Brokers:** Lessee and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Lease and each (for purposes of this Section 9.18 only the "Indemnitor") agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses (including attorney, accountant and paralegal fees) arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Lease.

**Section 9.20 - Dispute Resolution:** Should any dispute arise between the parties to this Lease other than a dispute regarding (1) the failure to pay rent or other payments as required by this Lease, (2) possession, or (3) an adjustment of the Basic Rent which shall be determined in accordance with Section 3.2, it is agreed that such dispute will be submitted to a mediator prior to any arbitration or litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten days, or if the parties fail to agree on a mediator within ten days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section 9.20.

**Section 9.21 - Entire Agreement:** It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as is expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be



liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by Lessee.

IN WITNESS HEREOF, the parties have subscribed their names hereto this 14<sup>th</sup>  
day of April 1994.

NATIONAL CARGO BUREAU, INC.

THE PORT OF PORTLAND

By: Charles S. Cumming  
Charles S. Cumming  
Vice-President & Corporate Secretary

By: Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By: Paul C. Elsner  
Paul C. Elsner, Assistant General Counsel  
for The Port of Portland

APPROVED BY COMMISSION ON:

April 13, 1994

March 29, 1994  
NCBT2Lease



APPROVAL TO LEASE 660 SQUARE FEET OF OFFICE SPACE  
TO NATIONAL CARGO BUREAU - TERMINAL 2

Date: April 13, 1994

Presented by: Peggy Krause, Senior  
Real Estate Associate

FACTUAL BACKGROUND AND ANALYSIS

This agenda item requests approval to lease approximately 660 square feet of office space within the Terminal 2 administration building to National Cargo Bureau. The National Cargo Bureau is a privately-owned, marine survey company which provides services to vessel owners.

The terms of the lease are as follows:

- Premises: Approximately 660 square feet of office space within the Terminal 2 administration building.
- Term: Five years commencing May 1, 1994, and continuing through April 30, 1999.
- Option to Renew: One option to renew for an additional five years.
- Initial Rent: \$859.00 per month based on a rate of \$15.62 per square foot per year. Rent includes taxes, insurance, utilities, and maintenance of the common area by the Port.

The rental rate is composed of three elements: base rent of \$9.30 per square foot per year; operating charge of \$5.00 per square foot per year; and additional rent of \$1.32 per square foot per year to reimburse the Port for a portion of the costs to improve the office space.

- Rent Adjustment
  - Base Rent: Subject to adjustment every three years based on the increase in the CPI during the previous three-year period, but no greater than 5 percent for the first adjustment period. In no event would the base rent be less than the previously adjusted rent.
  - Operating Charge: Subject to adjustment annually to reflect any increase in the operating costs for the previous fiscal year.
  - Additional Rent: Shall be fixed and apply during the initial term of the lease.

APPROVAL TO LEASE 660 SQUARE FEET OF OFFICE SPACE  
TO NATIONAL CARGO BUREAU - TERMINAL 2  
April 13, 1994  
Page 2

- Improvements: The Port will complete improvements to create the premises by installing a demising wall and entry door, creating two interior offices, and adjusting the HVAC and electrical systems. The estimated cost for this work is \$18,300. The lessee will reimburse the Port for \$4,350 of this cost through the payment of additional rent over the initial term of the lease.

No brokerage commission is payable as a result of this transaction.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That approval is given to lease to National Cargo Bureau approximately 660 square feet of office space within the Terminal 2 administration building for five years, commencing May 1, 1994, with one five-year option to renew, consistent with the terms presented to the Commission; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

AAFR-06  
C94018



**AMENDMENT NO. 1  
TO  
OFFICE LEASE  
BETWEEN  
NATIONAL CARGO BUREAU  
AND  
THE PORT OF PORTLAND**

This AMENDMENT NO. 1 TO OFFICE LEASE ("Amendment No. 1") dated as of the 11 day of July, 2000, is made and entered into by and between NATIONAL CARGO BUREAU INC., a corporation duly organized under the laws of the State of New York ("Lessee") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Lessee entered into an office lease effective April 14, 1994, Port Agreement No. 94-049 (the "Lease").

B. In order to accommodate the expansion of a neighboring tenant, Pacific Maritime Association, the Port wishes to relocate Lessee within the Port's Administration Building at Terminal 2, located at 3556 NW Front Avenue, Portland, Oregon, and to pay for remodeling of the new location and for Lessee's reasonable moving expenses.

NOW THEREFORE, the Port and Lessee agree as follows:

**1. SECTION 1.1 - DESCRIPTION OF PREMISES**

The first sentence of Section 1.1 of the Lease is hereby amended as follows:

The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated below, approximately 910 square feet of office space located on the third floor of the Terminal 2 Administration Building, Portland, Oregon, (hereinafter the "Building") identified in Drawing No. \_\_\_\_\_ to be attached hereto as Exhibit "A1" and made a part hereof, and any existing improvements thereon and appurtenances thereto (hereinafter referred to as "Premises").

**2. CONSTRUCTION OF IMPROVEMENTS**

The Port agrees, at its sole cost except as provided herein for the cost of the fire door, to construct certain improvements to the vacant space located on the third floor of the Terminal 2 Administration Building and shown in Exhibit A1, so as to create the Premises for Lessee. The Port's construction obligations are as follows: the current doorway to a storage room at the west end of the Premises will be walled up; a wall will be installed to define the east end of the Premises; HVAC system and electrical plugs and

switches will be modified to meet code; new carpeting and base will be installed; and walls will be painted as needed. In addition, the Port will contract with Advanced Communications Technologies to extend existing telecommunications services to the Premises. The Port will install a 20-minute rated fire door with 24" x 54" wire glass panel and paint it yellow to match the existing frame. Notwithstanding the foregoing, the Port will invoice, and Lessee agrees to pay \$365.00 for the cost of the door itself. The Port shall endeavor to complete construction of the improvements by April 7, 2000, however the Port will incur no liability for any delays in completion of construction of the Port Improvements.

### 3. MOVE OF LESSEE

The Port shall contract with Bekins Northwest and pay for the reasonable cost of moving Lessee to the Premises. The move is scheduled for April 7, 2000, subject to postponement in case of delayed completion of improvements as set forth in Section 2 above.

### 4. ARTICLE III - RENT

The calculation of Basic Rent and Operating Charges will be based on the original square footage of 660 square feet through May 30, 2004.

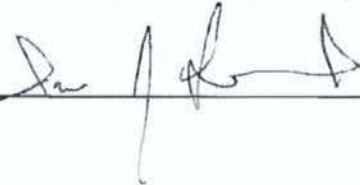
### 5. SECTION 7.6 - HOLDING OVER

Item (1) of Section 7.6 of the Lease is hereby amended as follows;

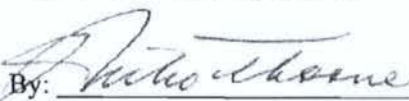
(1) the tenancy shall be one from month to month subject to the payment of all Rent in advance, and the calculation of Basic Rent and Operating Charges will be based on the actual square footage of the Premises;

Except as amended hereby, all other terms of the Lease shall remain in full force and effect.

NATIONAL CARGO BUREAU, INC.

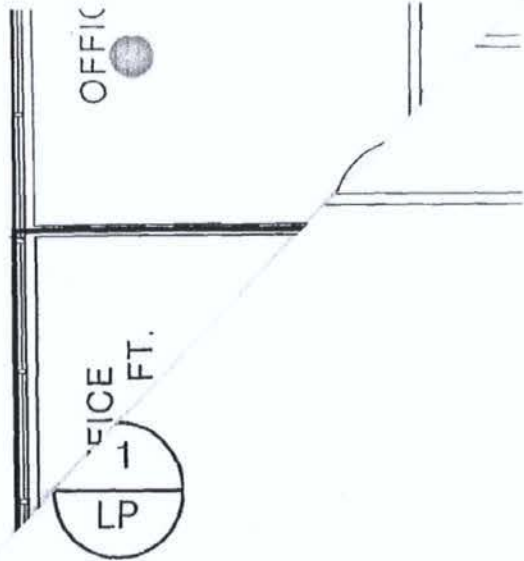
By: 

THE PORT OF PORTLAND

By:   
Mike Thorne, Executive Director


APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for the Port of Portland



EMPORARY EXHIBIT "A"  
(UNTIL FINALIZED DRAWING  
IS AVAILABLE)

*Attorney*

|   |                                      |                         |
|---|--------------------------------------|-------------------------|
|  | PORT OF PORTLAND<br>PORTLAND, OREGON |                         |
|   | MARINE CONTRACTS ADMINISTRATOR       |                         |
|   | 2000ZGEN<br>DESIGN NUMBER            | 23808<br>PROJECT NUMBER |

APPV'D



50434

JAN 31 1995

INTERGOVERNMENTAL AGREEMENT  
CITY OF PORTLAND / PORT OF PORTLAND

This Agreement, entered into as of this 25<sup>th</sup> day of January, 1995, by and between The Port of Portland, Oregon (the "Port") and the City of Portland, Oregon (the "City"):

RECITALS:

A. The Port is an Oregon port district authorized to conduct maritime activities pursuant to the terms of ORS Chapter 778 and to enter into intergovernmental agreements with other local governments pursuant to the terms of ORS 190.003 to ORS 190.110.

B. The City is a municipal corporation and maintains a fire boat station adjacent to the Port's facilities at Terminal No. 2. The area near the dock used by the City's fire boat is in need of dredging services in order to maintain its viability.

C. The Port intends to have the services of a private dredging company dredge accumulated material from in and around Berth 203 at the Port's facilities at Terminal No. 2 and is willing to coordinate the services of this dredger so that its services can also be made available to the City.

D. The City is willing to reimburse the Port for all costs associated with providing the dredger for the City's needs at the fire boat dock.

E. Both the Port and the City believe this cooperative arrangement will enhance their on-going collaborative relationship.

NOW THEREFORE, the parties agree as follows:

1. Term, Modification and Termination

This agreement shall be effective January 1, 1995, and shall continue for a period of one (1) year until December 31, 1995. This agreement may be modified, amended or altered from time to time only in writing and only with the consent of both parties. Either party may terminate this agreement upon sixty (60) days written notice to the other.

2. Scope of Duties

(a) The Port shall arrange for the dredging of the area in and around the City's fire boat dock (estimated at this time to be approximately 2,033 cubic yards of material), the location of which is as identified on Exhibit 1 attached hereto. In addition, the Port shall perform all appropriate oversight responsibilities associated with the aforementioned dredging activities in conjunction with the dredging of the Port's Berth 203.

(b) The City shall reimburse the Port for all costs associated with the Port's oversight activities as well as for the actual dredging activities for the City's fire boat dock.

3. Compensation

(a) The City shall reimburse the Port for project costs associated with the dredging activities, estimated at this time to be \$10.00 per cubic yard of dredge material, but which is subject to adjustment based on final dredge quality and the receipt by the Port of a competitive bid.

(b) Payment will be made not later than thirty (30) days after receipt of notice from the Port that said sum (or any portion thereof) is due and payable.

4. Independent Contractor Status

The Port is engaged under this Agreement as an independent contractor. The Port and its employees are not employees of the City and are not eligible for any benefits through the City.

5. Personnel

The Port may assign such personnel as it deems necessary to do the work or services to be rendered under this Agreement.

6. Ownership of Documents

All work that the Port performs under the terms of this Agreement shall be considered to be the property of the Port. The Port shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the Port produces in connection with this Agreement. Upon reasonable notice, the City shall have access to all materials for audit purposes. On termination of this Agreement, the Port may deliver all materials to the City.



7. Indemnification

(a) The City will hold harmless, defend and indemnify the Port and its officers, agents and employees against all claims, demands, actions, and suits (including attorneys fees and costs) brought against any of them arising from the City's performance under this Agreement.

(b) The Port will hold harmless, defend and indemnify the City and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from the Port's performance under this Agreement.

IN WITNESS WHEREOF, the City and the Port have executed this Agreement as of the day first written above.

CITY OF PORTLAND

By



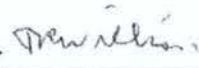
By



AUDITOR

APPROVED AS TO LEGAL  
SUFFICIENCY

By



Thomas R. Williams  
Senior Deputy City Attorney

PORT OF PORTLAND

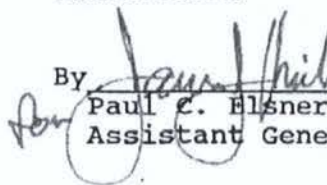
By



Mike Thorne  
Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By



Paul C. Elsner  
Assistant General Counsel



ORDINANCE No. 168451

\*Contract with Port of Portland to dredge Fire Boat Dock for  
Fire Boat No. 6, 3660 NW Front Avenue. (Ordinance)

The City of Portland ordains:

The Council finds:

1. The Port of Portland (Port) will be having a private dredging company dredge around the Port's Terminal No. 2 and is willing to make the services of the dredging company available to do needed dredging at the Fire Bureau's Dock for Fire Boat No. 6, 3660 NW Front Avenue.
2. The Port is willing to provide these dredging services to the City on substantially the terms set forth in Exhibit A, attached to this ordinance.
3. By obtaining the services of this dredging company, the City will be able to obtain these services at a lower cost than if it went through the process of obtaining the services required by the City alone.
4. Oregon States, ORS 190.003 to 190.110 authorize the City and the Port to enter in an agreement for the performance of any functions that either has authority to perform.

NOW, THEREFORE, the Council direct:

- a. The Commissioner of Public Safety and the City Auditor are authorized to execute an intergovernmental agreement with the Port for dredging services, in substantially the form set forth in Exhibit A, attached to this ordinance.

Section 2. The Council declares that an emergency exists because a delay in proceeding with this project in that the dredging company will proceed shortly to do the dredging for the Port and the City's dredging should be done at that time; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council, JAN 18 1995

Commissioner Charlie Hales  
TRWilliams:BR/ts  
January 17, 1995

fire\ord\dredging.trw

BARBARA CLARK  
Auditor of the City of Portland  
By *Britta Olson* Deputy

POPT2100448



24-010 806-004  
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95-160

MANAGEMENT AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
STEVEDORING SERVICES OF AMERICA, INC.

RECEIVED

95 OCT 22 11

This MANAGEMENT AGREEMENT, made and entered into this 1st day of October, 1995, by and between THE PORT OF PORTLAND, a port district of the State of Oregon, hereinafter referred to as "Port," and STEVEDORING SERVICES OF AMERICA, INC., 3556 N. W. Front Avenue, Portland, Oregon 97210, a corporation duly organized under the laws of the State of California, hereinafter referred to as "SSA."

WITNESSETH:

WHEREAS, the Port of Portland ("Port") entered into an agreement with Stevedoring Services of America ("SSA") in 1985 (FMC Agreement No. 224-01806) for the management of its facility at Terminal 2; and

WHEREAS, under the terms of that Agreement the parties agreed to negotiate renewal of that Agreement in 1995 for two (2) additional five (5) year periods; and

WHEREAS, the parties have agreed to the terms of those additional five (5) year periods and desire to set forth their respective responsibilities for the management of Terminal 2 in this document.

In consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - PREMISES AND GENERAL ADMINISTRATION

Section 1.1 - Description of Terminal 2. SSA, on the terms and conditions stated below, shall provide professional marine terminal management services for Terminal 2, which consists of approximately 33.46 acres which is improved with certain facilities and is more completely described in Port Drawing No. 90-4½, attached hereto as Exhibit A and made a part hereof (hereinafter referred to as "Terminal 2").

Section 1.2 - Use of Terminal 2. SSA is to use Terminal 2 to perform professional marine terminal services such as, but not limited to the receipt, delivery, loading, sorting, storage of cargo and attendant ship-related activities, excluding the repair of ships (Item No. 255.0, Port Terminal Tariff No. 7, [September 1, 1995]). SSA will provide and maintain all operating equipment, including cranes, and be responsible for the provision of all security at Terminal 2, including that required for any and all cargo located thereon. Any company may stevedore cargo at Terminal 2 to place of rest, direct transfer point or overside, as appropriate. SSA will manage Terminal 2 in

1 -MANAGEMENT AGREEMENT

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a prudent, open and, to the extent possible and as required by law, nondiscriminatory manner. SSA shall use its best efforts to serve the needs of the exporters, importers, and the marine-related business located within the Port district.

This Agreement does not, nor is it intended to create in SSA any leasehold estate and conveys only a license to SSA for its use of Terminal 2 to the extent necessary for the performance of SSA obligations under this Agreement.

Section 1.3 - Inspection of the Premises. On the Effective Date of this Agreement and thereafter not later than October 1 of each year this Agreement is in effect, the Port and SSA, each at their own expense, will jointly inspect Terminal 2 to review the condition of the facility and improvements and to agree upon a list of needed repairs and/or upgrades.

Section 1.4 - Marketing Plans. The Port and SSA shall be responsible for establishing and conducting their respective marketing programs and shall use their best abilities to attract customers to Terminal 2. The Port and SSA shall, within twenty (20) days of the execution of this Agreement, each name a Marketing Manager who will work with each other to develop and enhance the customer base at Terminal 2. They will meet on a no less than quarterly basis to discuss items of mutual interest including the evaluation of customer issues, service issues and performance topics. On an alternating basis, the Marketing Managers will prepare and submit a written report to the Project Managers.

## ARTICLE 2 - TERM

Section 2.1 - Initial Term. This Agreement shall commence on the Effective Date, and continue for an initial period of five (5) years (the "Initial Term") until September 30, 2000.

Section 2.2 - Additional Term. Not less than one hundred eighty (180) days before the end of the Initial Term, the Port and SSA may begin to negotiate the terms of one (1) five (5) year renewal. Notwithstanding the foregoing, there is no duty to renew this Agreement.

Section 2.3 - Effective Date. This Agreement shall be filed by the Port with the Federal Maritime Commission (FMC). This Agreement shall be effective upon receipt by the FMC (the "Effective Date"). If the FMC rejects this Agreement, this Agreement shall be of no force or effect. The foregoing shall also apply to each amendment to this Agreement which is required to be filed with the FMC.

## ARTICLE 3 - REVENUES AND CHARGES

Section 3.1 - Definition of Gross Receipts. As used in this Agreement, the term "Gross Receipts" means the total amount received, realized by or accruing to SSA from all dockage charges and from the Cargo Handling Fee. All Gross Receipts are deemed received as of the date of the ship's sailing from Terminal 2, and not at the time of payment.



Section 3.2 - Terminal Tariff and Dockage Charges. The Port has the exclusive right to determine the wharfage and dockage rates for all vessels berthing at Terminal 2. All tariff rates applicable to Terminal 2, including discounts shall, at all times, be competitive with rates imposed by the Port at its other facilities, regardless of whether such facilities are managed by the Port.

Section 3.3 - Revenues to the Port. The Port is entitled to One Hundred Percent (100%) of gross dockage revenues, said revenues being applied toward the SSA Minimum Annual Guarantee ("MAG").

The Port will assess against and collect from SSA a Handling Fee ("Fee") of \$1.25 per revenue ton during the term of this Agreement, and any extension thereof. For containers, the Handling Fee will be Twenty-five Percent (25%) of the appropriate Container Wharfage Tariff rate (40-foot; 20-foot; Empty; Full; etc.). SSA will provide the Port with monthly tonnage and revenue reports and such other cargo statistics as may be requested to support the Fee. The Fee may be increased or decreased annually on the anniversary date based on the CPI-U index as reflected each July of the Agreement.

Section 3.4 - Other Revenues.

3.4.1 All wharfage revenues belong to SSA.

3.4.2. All services and facility revenues belong to SSA.

3.4.3. All truck loading and unloading revenues belong to SSA.

3.4.4. All railcar loading/unloading revenues belong to SSA.

3.4.5. All miscellaneous labor-related revenues as billed by SSA belong to SSA.

3.4.6. All storage revenues belong to SSA.

3.4.7. The Port and SSA shall discuss and resolve fees for activities not identified in this Agreement.

Section 3.5 - Utilities. All utilities used by SSA, including (but not limited to) sewer, water, gas, telephone and electricity, (with the exception of electricity required to operate container cranes) shall be paid by SSA. The Port shall pay for the utilities used in areas of the Terminal it controls, as well as the electricity required to operate container cranes. SSA shall be responsible for all janitorial services; however, the Port will reimburse either the vendor directly or SSA for the lease interests it maintains at Terminal 2.

Section 3.6 - Minimum Annual Guarantee. For each contract year, the Minimum Annual Guarantee ("MAG") will be eighty percent (80%) of the average of the immediately prior two (2) years' gross receipts, "gross receipts" being composed of one hundred percent (100%) of the

gross dockage revenues and the Cargo Handling Fee. For the first year of this Agreement, SSA will pay a MAG of at least One Million Dollars (\$1,000,000); thereafter, the MAG shall be the amount mentioned above, which shall then be adjusted each year to reflect the July percentage change in dockage tariffs shown in Table 2100.100 - 2210.100, Terminal Tariff No. 7. SSA will pay the MAG in twelve (12) equal monthly installments.

3.6.1 Effect of Force Majeure on Minimum Annual Guarantee. In the event of a force majeure as defined in Section 9.4, the MAG shall be reduced by the Port's share of Gross Receipts that could have been reasonably realized by SSA at Terminal 2, but, as a result of the force majeure, were not.

Section 3.7 - Time and Place of Payments. SSA shall expeditiously invoice all Terminal 2 customers and perform all duties associated with the billing and collection of the Gross Receipts. SSA shall pay the Port the Port's share of Gross Receipts specified in Section 3.3. Payments made by SSA to the Port shall be accompanied by a copy of all invoices billed by SSA to third parties. Payment is to be made at:

The Port of Portland  
P. O. Box 5095  
Portland, Oregon 97208-5095

or such other place as the Port may designate. Subject to Section 3.9, all amounts not paid by SSA not later than thirty (30) days of after the end of the month of SSA's billing, shall bear interest at the rate set forth in the Port's then current Terminal Tariff.

Section 3.8 - Annual Reconciliation. Each year within sixty (60) days of the semi-annual anniversary of this Agreement, SSA will complete a reconciliation to ensure that the Port has been paid all monies due it under the terms of this Agreement. In the event that payments received by the Port as of the date of the completion of the reconciliation do not equal the revenues to the Port provided for in Section 3.3, SSA shall pay the deficiency within thirty (30) days after completing the reconciliation so that not later than ninety (90) days after the anniversary of this Agreement, the Port will be paid all monies due it.

Section 3.9 - Audit of Records. The Port has the right to audit SSA's revenue control system, books and records. SSA shall make available, at a location in Portland, Oregon, all SSA records that the Port deems necessary and appropriate. If the Port establishes that SSA has understated Gross Receipts by three percent (3%) or more (after allowance for the deductions and exclusions provided for herein) the entire expense of said audit shall be borne by SSA. If SSA understates Gross Receipts, the Port's share shall be due and payable by SSA, with interest thereon at the Port's prevailing interest rate as the same may be published in the Port's Marine Tariff as of the date such charges actually were due. If SSA has overstated Gross Receipts, all overpayment shall be refunded by the Port to SSA and Port shall refund the overpayment to SSA within thirty (30) days.



Section 3.10 - Other Agreements. Terminal Use Agreements between the Port and the Steamship Lines will be the sole province of the Port. Any financial requirements resulting from those agreements will remain the responsibility of the Port.

#### ARTICLE 4 - OBLIGATIONS OF THE PARTIES

Section 4.1 - Construction of Improvements. SSA shall not construct or install any improvements at Terminal 2 without the Port's express written permission.

Section 4.2 - Conduct of Business. SSA agrees to conduct its professional management services at Terminal 2 each and every business day generally observed by like businesses.

Section 4.3 - Maintenance. SSA shall, in addition to its duties set out in Section 4.9.3, keep and maintain all equipment (including fire extinguishers) at Terminal 2 (as well as all improvements erected, installed or made thereon, be it by the Port or SSA) in good and substantial repair and condition (including the exterior). SSA shall provide containers for trash and garbage and keep the Terminal free and clear of rubbish, debris and litter at all times. Port shall have the right to enter upon and inspect Terminal 2 at any time. SSA is solely responsible for keeping, providing and maintaining all occupational safety-related items, said items to be maintained to the standards set by Occupational Safety and Health Administration ("OSHA").

Section 4.4 - Liens. SSA will pay all sums of money that may become due for, or purporting to be due for any labor, services, materials, supplies, utilities, furnishings, machinery or equipment which has been furnished or ordered for the benefit of, in, upon or about Terminal 2; provided that SSA may, in good faith, contest any liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied only during the period of such contest.

Section 4.5 - Taxes. SSA will pay any and all lawful taxes and assessments which may be due during the term, or extension hereof, or which may become a lien or which may be levied by any tax-levying body upon Terminal 2 or upon any taxable interest acquired by SSA as a result of this Agreement. Furthermore, SSA agrees to pay any and all other taxes on all other property, real or personal, owned by SSA in or about Terminal 2, provided that SSA may, in good faith, contest the levying of all above-mentioned taxes and may permit the taxes so contested to remain undischarged and unsatisfied during the period of the contest.

Upon making any tax payment, SSA shall give the Port a copy of the receipts and vouchers showing payment. Notwithstanding any other provision contained in this Agreement, upon termination of the Agreement all taxes then levied or then a lien on any of Terminal 2 or taxable interest therein shall be paid in full with proration by SSA forthwith or as soon as a statement thereof has been issued by the tax collector. In the event that real property taxes are assessed upon Terminal 2, the Port agrees to contest the levying of such taxes at its own expense.



Section 4.6 - Operating Program. On or before July 1 of each calendar year, SSA shall submit its operating plan for Terminal 2 for the next twelve (12) month period to the Port, said plan to include, among other things, SSA's program for operating, managing, improving and marketing Terminal 2, as well as the status of SSA's relationship with community groups, regulatory agencies and other interested groups.

Section 4.7 - Port Use. Provided there is no conflict with SSA's customers, SSA will make Terminal 2 available to the Port for its use, with a minimum of seven (7) days and a maximum of ten (10) days written notice by the Port. In the event of such use, the Port shall share wharfage and dockage revenues with SSA per Article 3, with SSA performing all billing and collection services

Section 4.8 - Signs. All signs installed by SSA on or about Terminal 2 shall be submitted to the Port for review and approval prior to installation. No sign shall be permitted on the exterior of Terminal 2 except as approved by the Port.

Section 4.9 - SSA Responsibility for Operations:

4.9.1. Security. SSA shall be solely responsible for and shall maintain appropriate security for Terminal 2 as well as for any and all charges and costs associated therewith.

4.9.2 Equipment. Container cranes, including telescoping beams, shall be furnished by the Port to SSA upon request. SSA shall pay the Port and use the cranes in accordance with the rates, terms and conditions of Port Terminal Tariff No. 7.

4.9.3 Crane Maintenance and Support. SSA will provide crane maintenance (in accordance with the standards in the Port's maintenance program) and operational support for any and all Terminal 2 cranes, with the Port being responsible for obtaining certification. The parties shall agree as to the initial maintenance program and any changes thereto, so as to sustain the various cranes' certification. SSA will provide all ILWU labor and supervision, as well as the parts necessary for crane maintenance and operation. The Port will provide SSA a current inventory of parts available. SSA will thereafter be responsible for maintaining the inventory. The Port will provide electrician support and reimburse SSA for parts purchased (at SSA's cost) and a fee of Four Thousand Dollars (\$4,000) per crane per month for SSA's services. The fee will be adjusted yearly based upon the percentage change in the PMA wages and assessments.

The Port reserves the right to assign in or out of service any and all cranes at Terminal 2, provided notice of the Port's intentions to take a crane out of service is given SSA at least ninety (90) days in advance. This notification requirement may be shortened by agreement. The Port will be responsible for the costs of Longshore standby and crane rental due to either lack of service by or availability of the Port's electrician. Should Crane 378 be taken out of service, Cranes 371 and 372 will be modified to maximize the service area on the dock face. This crane maintenance provision will be subject to review at the end of six (6) months and may be modified



upon consent of both parties. Within thirty (30) days after the Effective Date of this Agreement, the Port shall fund an independent condition survey of the T-2 cranes.

4.9.4 Other Equipment. SSA will have an opportunity to negotiate the purchase of any Port breakbulk equipment currently located on Terminal 2. Any other terminal operations equipment which SSA deems appropriate, including container cranes, shall be furnished and completely maintained by SSA.

Section 4.10 - Port Obligations. The Port agrees to continue to perform the facility maintenance functions required at Terminal 2, consistent with its past practice, so as to maintain the facility in a good and commercial condition. This maintenance obligation includes all rail lines on the Terminal as well as the fender pile system. Further, the Port agrees to use its best efforts to maintain the designed dredge depth in front of Terminal 2's berths.

## ARTICLE 5 - INDEMNITY AND INSURANCE

Section 5.1 - Indemnity. SSA agrees to fully indemnify, hold harmless and defend the Port, its Commissioners, officers and employees from and against that portion of all losses, expenses, claims and actions (including all expenses incidental to the investigation and defense thereof) of any kind or nature including, but not limited to, claims or actions based upon or arising out of damages or injuries to third persons or their property, proximately caused through the fault of SSA, its employees or agents in the use or occupancy of Terminal 2. The Port shall give SSA prompt and reasonable notice of any such claims or actions known to the Port, and SSA shall have the obligation to investigate, compromise and defend same, provided such claim is not caused by the negligence of the Port, its employees or agents.

In the event that there is any bodily injury at, or property damage to, any portion of Terminal 2 caused by SSA or any third party (including vessels), SSA shall immediately notify the Port's Risk Manager and cooperate in the Port's investigation of said incident. SSA shall make all reports or documents concerning the incident available to the Port and cooperate with the Port in investigating, compromising or litigating the claim against third parties.

For any property damage done to Terminal 2 caused by the negligence of SSA, SSA shall be given the option of repairing the damage or having the Port repair the damage at SSA's expense. The Port shall give written notification to SSA of any damage requiring repair and give SSA thirty (30) days to commence repair. If within that period, or such other period as may be mutually agreed upon, no effort has been made to effect repairs, then the repairs will be performed by the Port and billed to SSA.

For damage done to or at Terminal 2 by third parties for which SSA is not responsible under the terms of this Agreement or otherwise, the Port shall bear the initial cost of investigating, compromising or litigating the claim, but may recover such costs if otherwise permitted by law or this Agreement.



## ARTICLE 6- SSA's ENVIRONMENTAL OBLIGATIONS

Section 6.1 Definitions. As used in this Agreement, the following terms are defined as follows:

6.1.1 "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which in any way govern materials, substances or products and/or relate to the protection of health, safety or the environment.

6.1.2 "Hazardous Substances" shall be interpreted in the broadest sense to include any substance, material or product defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or any other similar term in or under any Environmental Laws.

6.1.3 "Environmental Costs" shall be interpreted in the broadest sense to include, but shall not necessarily be limited to: (i) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs or other relief; (iii) the cost, expense or loss to the Port as a result of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iv) all expenses of evaluation, testing, analysis, clean-up, remediation, removal and disposal relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (v) all expenses of reporting the existence of Hazardous Substances or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (vi) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone and telefax charges and other expenses; and (vii) any damages, costs, fines, liabilities and expenses which are claimed to be owed by any federal, state or local regulating or administrative agency.

Section 6.2 - No Use of Hazardous Substances. No handling, storage, generation, creation, disposal, transportation or discharge of any Hazardous Substances shall be permitted on, about or from Terminal 2 by SSA, its employees, agents or contractors. This restriction shall not apply, however, to the use of ordinary office and janitorial supplies which are available over the counter for common use by members of the general public so long as such use is in small quantities. Nor shall this prohibition apply to substances fully contained inside of motor vehicles so long as used in accordance with all legal requirements of all Environmental Laws.

Section 6.3 - Limited Business Use of Hazardous Substances. Except as specifically provided in this Section, the use, handling, storage, disposal, generation, creation, transportation or discharge of Hazardous Substances in, on, about or from Terminal 2 is prohibited. SSA may, in the normal course of business and to the extent necessary for SSA's use of Terminal 2, use certain Hazardous Substances on Terminal 2 in compliance with the following: (a) use of such



Hazardous Substances is in compliance with all Environmental Laws; (b) use of such Hazardous Substances does not expose Terminal 2 or neighboring properties to any meaningful risk of contamination or damage; (c) SSA shall be permitted to use only those Hazardous Substances as have been specifically identified and consented to, in writing, by the Port and only in such quantities as have been so consented to by the Port. The Port may condition its consent to the use or presence of any Hazardous Substance At Terminal 2 upon SSA's giving the Port such additional assurances as the Port, in its discretion, deems necessary to protect itself, the public, Terminal 2 and the environment against damage, contamination, injury or liability therefrom, including, but not limited to, the installation (and removal on or before termination of this Agreement) of reasonable protective modifications to Terminal 2 or an increase in the security deposit and insurance coverage. Hazardous Substances consented to are listed on the attached Exhibit "\_\_\_." The Port reserves the right to inventory or cause to be inventoried any such Hazardous Substances being used and to approve or deny use of the same

Section 6.4 - Environmental Inspection. The Port reserves the right to inspect for Hazardous Substances and/or SSA's management of Hazardous Substances at Terminal 2 from time to time, without notice to SSA. If the Port, at any time during the term of this Agreement or extension thereof, has reason to believe that SSA is handling Hazardous Substances contrary to this Agreement or in any manner that may allow contamination of Terminal 2, the Port can, without limiting its other rights and remedies, require SSA to furnish the Port, at SSA's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting such audit and the audit procedures. The Port shall be given an original copy of the audit results. SSA shall cooperate with all such requests. If the audit or assessment reveals that no contamination has occurred and no violation of any Environmental Laws has occurred, then the Port shall reimburse SSA the cost of the audit or assessment.

Section 6.5 - Safety. Pursuant to the terms of this Agreement, SSA must comply with all applicable state, federal and local laws and ordinances. As a part of that requirement, SSA shall maintain Material Safety Data Sheets for each and every Hazardous Substance used by SSA, SSA's agents, employees, contractors, licensees or invitees at Terminal 2, as required under the Hazard Communication Standard in 29 CFR §1910.1200, as it may be amended, redesignated or retitled from time to time, as well as comparable state and local statutes and regulations. In order to ensure that such information is available to the Port in the event of a spill or other emergency, all such information shall be kept current at all times and a copy of all such materials shall be kept in a place known to and easily accessible to the Port.

Section 6.6 - Disposal of Hazardous Substances. Except as allowed by state and/or federal discharge permit approved by the Port, SSA shall not dispose of any Hazardous Substance, regardless of the quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within Terminal 2, or other property of the Port. Any disposal of Hazardous Substances shall be in approved containers and removed from Terminal 2 in accordance with the law. If SSA knows, or has reasonable cause to believe, that any release of a Hazardous Substance has come to be located on or beneath the Premises, SSA must immediately



give written notice of that condition to the Port. If SSA discharges into a Port storm sewer pursuant to a Port-approved discharge permit, the Port shall be entitled to inspect for compliance with permit and Port requirements.

Section 6.7 - Notice to Port. SSA shall immediately notify the Port upon becoming aware of a violation or alleged violation of any Environmental Law and/or: (1) any leak, spill, release or disposal of a Hazardous Substance on, under or adjacent to Terminal 2 or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to SSA or any other person relating to such Hazardous Substances on, under or adjacent to Terminal 2 or any violation or alleged violation of any Environmental Laws with respect to Terminal 2.

Section 6.8 - Environmental Remediation. In the event of a leak, spill or release of a Hazardous Substance, or any other substance in violation of Environmental Laws, on Terminal 2 (or in any adjacent or nearby waterways, or on adjacent properties) or the threat of or reasonable suspicion of the same, SSA shall immediately undertake all acts necessary or appropriate to contain, clean-up and remove the Hazardous Substance. SSA shall also undertake, within a reasonable time, all investigatory, remedial and/or removal actions necessary or appropriate to ensure that any contamination by the Hazardous Substance is cleaned to meet all state and federal standards) and any violation of any Environmental Law is stopped.

The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individuals conducting such procedures. Within thirty (30) days following completion of such investigatory, remedial and/or removal action, SSA shall provide the Port with a report outlining in detail what has been done by SSA to cure any such problems. Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises (including, without limitation, the soil and surface and ground water thereof), at SSA's own cost and expense, all Hazardous Substances which have been released on, in, under or about Terminal 2, during the term of this Agreement or any prior agreement held by SSA and shall restore the Terminal to its pre-contamination condition, in conformity with all applicable governmental laws, rules and regulations. Any Environmental Costs incurred by or assessed against the Port shall be promptly paid by Lessee after the Port incurs the obligation to pay such Costs or determines that an Environmental Cost is owing and the Port so notifies Lessee. If a spill or contamination is discovered by Lessee but is not on the Premises and/or is not the responsibility of Lessee under this Lease, Lessee shall still immediately notify the Port of any problem or possible problem.

Section 6.9 - Annual Certification. If requested in writing by the Port, not later than each anniversary of the Effective Date, SSA shall provide a written certification which certifies that SSA has not received any notice from any governmental agency regarding a violation of any Environmental Law; or, if such notice was received, SSA shall explain the reason for the notice, what has been done to remedy the problem and shall attach a copy of the notice to the certification. SSA shall also certify that SSA has obtained, and maintained in force, all permits



required under all Environmental Laws. Copies of all such permits shall be made available to the Port upon request.

Section 6.10 - Documentation of Hazardous Substances. SSA shall maintain for periodic inspection by the Port and deliver to the Port, at the Port's request, true and correct copies of the following documents (hereinafter referred to as the "Documents") related to the handling, storage, disposal and emission of Hazardous Substances, concurrently with the receipt from or submission to a governmental agency: Permits; approvals; reports and correspondence; storage and management plans; spill prevention control and countermeasure plans; other spill contingency and emergency response plans; documents relating to taxes for Hazardous Substances; notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under or around Terminal 2 (provided said installation of tanks shall only be permitted after Port has given Lessee its written consent to do so, which consent may be withheld in Port's sole discretion); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed in, on or under the Premises.

Section 6.11 - Environmental Contamination Caused by Port or Other Port Invitees. SSA shall not be responsible for any environmental contamination or violation of Environmental Law caused by the Port. A rebuttable presumption will still exist, however, that any contamination found on the Premises was caused by SSA.

Section 6.12 - Environmental Indemnity. Without in any way limiting the generality of the Section on General Indemnity found at Section 5.1, SSA shall be solely responsible for and agrees to defend, indemnify and hold harmless the Port from and against all Environmental Costs claimed against or assessed against the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity at or about the Premises after the Effective Date of this Agreement or earlier if caused by SSA or SSA's agents or invitees. This indemnification shall require SSA to reimburse the Port for any diminution in value of the Premises or other adjacent or nearby Port property, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of Terminal 2, or any other Port property, including damages arising from any adverse impact on marketing of space in or near the Terminal, including other Port property. SSA's obligations shall not apply if the Hazardous Substances were deposited at the Terminal by the Port or the Port's agents. SSA shall be solely responsible to assure that no person brings any Hazardous Substances onto the Premises. Notwithstanding the foregoing, SSA shall not be responsible for, and does not indemnify the Port for, any actions of the Port that cause environmental damage or a violation of any Environmental Law at the Terminal.

## ARTICLE 7 - INSURANCE

Section 7.1 - Insurance Requirements. Insurance requirements set forth below do not in any way limit the amount or scope of liability of SSA under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage the Port will accept to help insure full



performance of all terms and conditions of this Agreement. All insurance required by SSA under this Agreement shall meet the following minimum requirements:

7.1.1. Certificates; Notice of Cancellation. On or before the Effective Date, SSA shall provide the Port with certificates of insurance establishing the existence of all insurance policies required under this Section. Thereafter, the Port must receive notice of the expiration or renewal of any policy at least thirty (30) days prior to the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated or allowed to lapse without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the entire Initial Term and any extension thereof. Insurance canceled without Port consent shall be deemed an immediate Event of Default under this Agreement. The Port shall also be given certified copies of SSA's policies of insurance, upon request.

7.1.2. Additional Insured. The Port shall be named as an additional insured in each required policy and, for purposes of damage to the Premises, as a loss payee. Such insurance shall not be invalidated by any act, neglect or breach of contract by SSA.

7.1.3. Primary Coverage. The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

7.1.4. Company Ratings. All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or equivalent. The Port may, upon thirty (30) days written notice to SSA, require SSA to change any carrier whose rating drops below an A rating.

Section 7.2 - Required Insurance. At all times during this Agreement, SSA shall provide and maintain the following types of coverage:

7.2.1. General Liability Insurance. SSA shall maintain an occurrence form commercial general/marine liability policy (including coverage for broad form contractual liability; sudden and accidental spill coverage on land and on water; personal injury liability, terminal operator liability, stevedoring legal liability and Wharfinger liability) for the protection of SSA and the Port, insuring SSA and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property (including the loss of use thereof) and occurring on or in any way related to the Premises or occasioned by reason of the operations of SSA. Such coverage shall name the Port as an additional insured. Coverage shall be in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit per occurrence for bodily injury and property damage for all coverage specified herein.

7.2.2. Fire Legal Liability Insurance. The Port shall insure the building space and all improvements affixed thereto, considered to be part of Terminal 2, being managed by SSA. SSA is responsible to insure all of its own personal property, which items shall not be covered by

Port insurance. Furthermore, SSA must at all times carry Fire Legal Liability insurance coverage in an amount not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000).

7.2.3 Automobile Liability Insurance. SSA shall maintain an occurrence form automobile liability policy insuring SSA and the Port against liability for damage because of bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of SSA's owned, hired and non-owned vehicles on and around the Premises. Such insurance shall name the Port as an additional insured. Coverage shall be in an amount if not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

7.2.4 Workers' Compensation Insurance. SSA shall maintain in force Workers' Compensation insurance for all of SSA's employees, including coverage for Employer's Liability, and, if applicable, coverage for Longshore and Harbor Workers' Compensation Act and the Jones Act. In lieu of such insurance, SSA may maintain a self-insurance program meeting the requirements of the State of Oregon and the U. S. Department of Labor by maintaining a policy of Excess Workers' Compensation with a limit of at least ONE MILLION DOLLARS (\$1,000,000) per accident above the self-insured retention.

Section 7.3 - Waiver of Subrogation. Except as limited by this Section, the parties hereto waive any right of action that they and/or their insurance carriers might have against the other for loss or damage, to the extent that such loss or damage is covered by any All-Risk property insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damages. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

Section 7.4 - Periodic Review. The Port shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the Port determines that such types, limits, and/or terms should be changed, the Port will give SSA a minimum of thirty (30) days notice of such determination and SSA shall modify its coverage to comply with the new insurance requirements of the Port. SSA shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

## ARTICLE 8 - DEFAULT

Section 8.1 - Events of Default. The following shall be "Events of Default":

8.1.1 Default in Payments. Upon the Port giving SSA ten (10) days written notice after failure of SSA to make any payment or other charge within ten (10) days after it is due.

8.1.2 Default in Other Covenants. Failure of SSA to comply with any term or condition or fulfill any obligation of this Agreement, other than the payment of rent or other charges, within ten (10) days after written notice by the Port specifying the nature of the default



with reasonable particularity; provided, however, that if the default is of such a nature that it cannot be completely remedied within the ten (10) day period, such default shall not be deemed an Event of Default if SSA begins correction of the default within the ten (10) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency. Insolvency of SSA; an assignment by SSA for the benefit of creditors; the filing by SSA of a voluntary petition in bankruptcy; an adjudication that SSA is bankrupt or the appointment of a receiver of the properties of SSA; the filing of an involuntary petition of bankruptcy and failure of SSA to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on SSA's interest in this Agreement and failure of SSA to secure discharge of the attachment or release of the levy of execution within ten (10) days.

8.1.4 Abandonment. Failure of SSA for fifteen (15) days or more to occupy the property for one or more of the purposes permitted under this Agreement unless such failure is excused under other provisions of this Agreement.

Section 8.2 - Notice of Default. In the event of a Default under the provisions of this Agreement, the Port will provide SSA a notice of Default in writing by certified mail.

Section 8.3 - Remedies. Upon an Event of Default defined in Section 8.1 above, the Port shall be entitled to any or all of the following remedies:

8.3.1 Damages. The Port shall be entitled to recover immediately, all past due charges owed to the Port by SSA and any other damages incurred by the Port, including any costs of re-entering Terminal 2 as a result of SSA's Default.

8.3.2 Termination. The Port may terminate this Agreement.

Section 8.4 Re-entry After Termination. If this Agreement is terminated for any reason, SSA's liability for damages shall survive such termination, and the rights and obligations of the parties shall be as follows:

8.4.1 SSA shall vacate Terminal 2 immediately, remove any property of SSA, including any fixtures which SSA is required to remove at the end of the Agreement term, perform any cleanup, alterations or other work necessary to put the Terminal in the condition SSA received it, normal wear and tear excepted. Depreciation and wear from ordinary use need not be restored, but all other repair for which SSA is responsible shall be completed to the latest practical date prior to such surrender.

8.4.2 The Port may re-enter, take possession of, and operate Terminal 2, and may remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages to SSA or a third party..



## ARTICLE 9 - GENERAL PROVISIONS

Section 9.1 - Assignment. No part of Terminal 2 or this Agreement may be assigned, nor may a right of use to any portion of Terminal 2 be conferred on any third person by any other means, without the prior written consent of Port. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law and to any sale of a controlling interest in the stock of SSA.

No consent in one instance shall prevent this provision from applying to a subsequent instance. Although the giving of consent shall be the sole and exclusive prerogative of the Port, the Port, in making such a determination may consider the following factors: financial ability, business experience and intended use.

Section 9.2 - Condemnation. If Terminal 2 or any interest therein is taken as a result of the exercise of the right of eminent domain, this Agreement shall terminate as to such portion as may be taken. If the portion taken does not feasibly permit the continuation of the operation of Terminal 2 by SSA, SSA shall have the right to cancel. Such cancellation shall be effective as of the date of taking. The Port shall be entitled to that portion of the award as represented by the land and improvements owned by the Port.

Section 9.3 - Nonwaiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

Section 9.4 - Force Majeure. If SSA or the Port are unable in whole or in part to carry out their respective obligations under this Agreement as a result of a force majeure neither party shall not be deemed in Default during the continuance of such inability, provided notice thereof is given the other. The term "Force Majeure" as used herein shall mean, without limitation, independent and uncontrollable acts: acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders or restraints of the United States of America, the State of Oregon, their respective departments, agencies, officials or any civil or military authority, insurrections, riots, volcanic eruptions, earthquakes, fires, storms, droughts, floods, explosions, breakage to machinery, or accidents caused by third parties to the Terminal 2 pier rendering it unusable, structurally unsound, or unsafe for the purpose for which it is intended, failure to maintain a draft of forty (40) feet below mean low water for the berth(s) at Terminal 2, or any other cause or event not reasonably within the control of SSA or the Port and not resulting from its negligence. SSA and the Port agree, however, to use their respective best efforts to remedy with all dispatch the cause or causes preventing that party from carrying out this Agreement, provided that the settlement of strikes, lockouts, or other industrial disturbances shall be within the discretion of the party so affected and neither shall be required to settle strikes, lockouts, or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the party is unfavorable to them.

Section 9.5 - Adherence to Law. SSA shall adhere to all applicable federal, state and local laws, rules, regulations and ordinances, including laws governing its relationship with its employees, including but not limited to, laws, rules, regulations and policies concerning Workers' Compensation, minimum and prevailing wage requirements and occupational safety and health requirements. Any service, charge, process or procedure not set out in the Agreement will be done in accordance with the terms and conditions set out in the Port's Terminal Tariff No.7 and all replacements and supplements thereto.

Section 9.6 - Time of Essence. It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

Section 9.7 - Warranties/Guarantees. Except for those warranties specifically set forth herein, the Port makes no warranty, guarantee or averment of any nature whatsoever concerning the physical condition of Terminal 2, and it is agreed that the Port will not be responsible for any loss, damage or costs which may be incurred by SSA by reason of any such physical condition.

9.7.1 The Port shall use its best efforts to maintain the designed dredged depths of Terminal 2 at no expense to SSA.

9.7.2 The Port warrants that there is no latent defect or unsafe or unsound physical condition on Terminal 2 of which it or its employees and agents is, or should be, aware.

9.7.3 The Port shall maintain the structural integrity of Terminal 2 and shall repair promptly any damage to Terminal 2 which would undermine its structural integrity or safe working conditions, subject to SSA's obligation of indemnification under Article 7 for damages.

Section 9.8 - Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Section 9.9 - Consent of Port. Whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval or direction shall be received in writing from the Port's Project Manager.

Section 9.10 - Notices. All notices required under this Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent :

To the Port:                      Attn: Marine Contracts Administrator  
   The Port of Portland  
   P. O. Box 3529  
   Portland, Oregon 97208



To SSA:

Stevedoring Services of America, Inc.  
3556 N. W. Front Avenue  
Portland, Oregon 97210

The date of service of such notice is the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification. Any modification of this Agreement shall be mutually agreed upon and reduced to writing, and to the extent it does not affect a major business term of the Agreement, may be done for the Port, by its Executive Director.

Section 9.12 - Improvements and Fixtures.

9.12.1 All fixtures placed upon Terminal 2 by SSA during the term of this Agreement shall remain the property of SSA. Movable furniture, decorations, floor covering, other than hard surface bonded or adhesively fixed flooring, curtains, blinds, furnishings and trade fixtures shall also remain the property of SSA if placed on Terminal 2 by SSA.

9.12.2 On or before the date this Agreement terminates because of expiration of the original or a renewal term by passage of time, or an Event of Default, SSA shall remove any or all fixtures which remain the property of SSA and shall repair any physical damage resulting from the removal. If SSA fails to do so, this shall be an abandonment of Terminal 2 and the Port may retain such property and all rights of SSA with respect to Terminal 2 shall cease or, by notice in writing given to SSA within twenty (20) days after removal was required, the Port may elect to remove such property. SSA shall be liable to the Port for the cost of removal, transportation to storage, and storage, with interest at eighteen percent (18%) per annum on all such expenses from the date of expenditure by the Port.

9.12.3 Upon termination of this Agreement, SSA shall remove all structures, installations, or improvements built by SSA at Terminal 2 within ninety (90) days at SSA's sole expense unless the Port and SSA are able to agree otherwise.

Section 9.13 - No Pledge of SSA Interest. SSA shall not pledge its interest in this Agreement for any purpose.

Section 9.14 - Good Faith: The terms and conditions set forth in this Agreement are for the benefit of both parties. The parties further agree and understand that time is of the essence. In the performance of the duties and obligations set forth herein, there is an obligation and duty of reasonable diligence and good faith imposed on the parties to fulfill the terms, conditions and covenants in this Agreement.



Section 9.15 - Information and Cooperation: Both parties shall provide full information regarding their requirements for the successful accomplishment of the purposes of this Agreement and marketing of Terminal 2. SSA and Port agree to share all information relevant to this Agreement, excluding exempt information as provided in ORS Chapter 192, and to cooperate with all corporations, firms, contractors, governmental entities, and other persons involved in, or associated with, Terminal 2. Public access to Terminal 2 for media coverage, tours, promotional events, or political events shall be coordinated between the Port and SSA. Copies of this Agreement will be provided to any requesting party without charge. SSA shall prepare a monthly report to the Port reasonably detailing vessel calls, vessel characteristics, and time at berth.

Section 9.16 - Duty to Inform: If at any time during the performance of this Agreement, or at any time in the future, with respect to Terminal 2, either party becomes aware of actual or potential problems, faults or defects, any nonconformance with contract, federal, state or local law, rule or regulation, or have any objection to any decision or order made by the other party, the parties agree to give prompt notice to the other party's Project Manager.

Section 9.17 - Port's Project Manager: The Port shall appoint a Project Manager who shall have the authority to make decisions concerning the interpretation of this Agreement. Within twenty (20) days after execution of this Agreement, Port shall give SSA written notice of its Project Manager. Port shall give SSA written notice of any change in its Project Manager.

Section 9.18 - SSA's Project Manager: SSA shall name a Project Manager within twenty (20) days after execution of this Agreement. SSA shall act through its Project Manager who shall have full authority to act on behalf of and execute written documents that legally bind SSA. SSA shall give Port written notice of any change in its Project Manager.

Section 9.19 - Attorney Fees: In the event of a dispute between the parties as to the interpretation or applicability of any of the provisions of the Agreement and the parties are unable to resolve the matters through mediation within thirty (30) days, of notice of the dispute, and thereafter a suit or action is instituted in connection therewith, the prevailing party shall be entitled to recover in addition to costs and disbursements (including experts fees and all costs associated with discovery), such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, such fees as may be as allowed by the appellate court. Multnomah County Circuit Court shall be the venue for an action or suit concerning the terms of this Agreement.

Section 9.20 - Entire Agreement. It is understood and agreed that this instrument and the attachments, schedules and exhibits thereto contain the entire Agreement between the parties hereto with respect to Terminal 2. It is further understood and agreed by SSA that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by SSA against the Port for, and Port shall not be liable by reason of the breach of any representations or promises prior to the Effective Date not expressly stated in this Agreement, any other written or oral agreement with the Port

existing prior to the Effective Date being expressly waived by SSA, it being understood that the Port requires this Agreement to be in writing and adopted by the Port Commission.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

The parties hereto further acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement on the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

STEVEDORING SERVICES OF AMERICA, INC.

By

As Its SR. VICE PRESIDENT

THE PORT OF PORTLAND

By

for Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

Counsel for The Port of Portland

APPROVED BY COMMISSION :

OCT 11 1995



AMENDMENT NO. 1 TO MANAGEMENT AGREEMENT  
BETWEEN THE PORT OF PORTLAND AND  
STEVEDORING SERVICES OF AMERICA, INC.

This AMENDMENT NO. 1 is entered into effective the 15<sup>th</sup> day of May, 1996, between THE PORT OF PORTLAND (the "Port") and STEVEDORING SERVICES OF AMERICA, INC. ("SSA").

RECITALS:

A. The Port and SSA are parties to a Management Agreement (Port Agreement No. 95-160, FMC Agreement No. 224-010806-004) for the management of the Port's Terminal 2, dated October 1, 1995 (the "Management Agreement").

B. Section 4.9.3 of the Management Agreement requires SSA to provide crane maintenance for Terminal 2 cranes, and provides that "[t]his crane maintenance provision will be subject to review at the end of six (6) months and may be modified upon consent of both parties."

C. The parties have now completed their six-month review of the crane maintenance provision, and wish to modify the Management Agreement accordingly.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Management Agreement and this Amendment No. 1, the parties agree as follows:

1. Section 4.9.3 of the Management Agreement is amended to read as follows (additions shown double-underscored, deletions shown in strikeout):

"4.9.3 Crane Maintenance and Support. SSA will provide crane maintenance (in accordance with the standards in the Port's maintenance program) and operational support for any and all Terminal 2 cranes, with the Port being responsible for obtaining certification. The parties shall agree as to the initial maintenance program and any changes thereto, so as to sustain the various cranes' certification. SSA will provide all ILWU labor and supervision, as well as the parts necessary for crane maintenance and operation. The Port will provide SSA a current inventory of parts available. SSA will thereafter be responsible for maintaining the inventory. The Port will provide electrician support and reimburse SSA for parts purchased (at SSA's cost), and will pay SSA a fee for maintenance of each crane in service, at the following rates effective April 1, 1996: of Four Thousand Dollars (\$4,000) per crane per month for SSA's services

"Crane 371 \$5,000 per month

"Crane 372 \$5,000 per month

"Crane 356 \$4,000 per month



"The monthly maintenance fee for each crane will be adjusted yearly commencing October 1, 1997, based upon the percentage change in the PMA wages and assessments over those in effect as of October 1, 1996.

"The Port reserves the right to assign in or out of service any and all cranes at Terminal 2, provided notice of the Port's intentions to take a crane out of service is given SSA at least ninety (90) days in advance. This notification requirement may be shortened by agreement. The Port will be responsible for the costs of Longshore standby and crane rental due to either lack of service by or availability of the Port's electrician. The Port is not responsible for labor standby or deadtime costs during downtime caused by equipment failure. Should Crane 378 be taken out of service, Cranes 371 and 372 will be modified to maximize the service area on the dock face. This crane maintenance provision will be subject to review at the end of six (6) months and may be modified upon consent of both parties. Within thirty (30) days after the Effective Date of this Agreement, the Port shall fund an independent condition survey of the T-2 cranes."

2. All other provisions of the Management Agreement shall remain in full force and effect.

STEVEDORING SERVICES OF  
AMERICA, INC.

By: 

Bruce Whisnant  
Senior Vice President

THE PORT OF PORTLAND

By: 

Mike Thorne  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY:

By: 

Counsel, Port of Portland

**AMENDMENT NO. 2  
MANAGEMENT AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
STEVEDORING SERVICES OF AMERICA, INC.**

This AMENDMENT NO. 2 is entered into this 11<sup>th</sup> day of August, 2000, by and between THE PORT OF PORTLAND, a port district of the State of Oregon, hereinafter referred to as "Port," and STEVEDORING SERVICES OF AMERICA, INC., 3556 N. W. Front Avenue, Portland, Oregon, 97210, a corporation duly organized under the laws of the State of Washington, hereinafter referred to as "SSA."

**RECITALS**

A. The Port and SSA are parties to a Management Agreement, Port Agreement No. 95-160 (FMC Agreement No. 224-010806-005) (the "Agreement") for the management of its facility at Terminal 2 as amended on May 15, 1996.

B. SSA has given the Port notice, per Section 2.2, of its intent to renew the Agreement for one five-year term, which specific modifications are reflected herein.

C. In consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

**1. ARTICLE 2 - TERM**

Add Sections 2.4 and Section 2.5 as follows:

Section 2.4 – Termination by SSA. Beginning October 1, 2001, in the event that economic conditions at Terminal 2 change such that the Gross Receipts generated at the Premises are 10% lower than the MAG during the immediately preceding twelve-month period, then SSA shall have the option to terminate the Agreement upon giving the Port one-hundred and eighty (180) days advance written notice of its intent to do so. In lieu of termination, the parties may renegotiate the minimum annual guarantee, but in no event are they required to do so.

Section 2.5 – Termination by Port. Beginning October 1, 2001, in the event the Port's Operating Costs exceed either the Management Fee or the MAG, whichever is greater, during any prior twelve-month period, then the Port shall have the option to terminate the Agreement upon giving SSA one-hundred and eighty (180) days advance written notice of its intent to do so. In lieu of termination, the parties may renegotiate the Minimum Annual Guarantee, but in no event are they required to do so. Operating Costs ("Operating Costs") are defined as Port expense net payment from SSA for the following:

- Unreimbursed maintenance labor, materials & contract expenses
- Unreimbursed security costs
- Unreimbursed electric, water, sewer, stormwater & other utility expenses



- Dredging costs amortized over three years
- Depreciation of assets placed in service after October 1, 1999
- Crane maintenance costs
- Insurance and unreimbursed casualty and damage losses
- Other costs incurred by the Port related to the maintenance and operation of the facility
- Rebates
- \$10,000 toward administration and marketing costs

## 2. **ARTICLE 3 - REVENUES AND CHARGES**

Sections 3.1 and 3.3 shall be deleted in their entirety and replaced with the following:

Section 3.1 - Management Fee. SSA shall pay a management fee ("Management Fee") to the Port based on the sum of the following gross receipts ("Gross Receipts"):

- 100% Dockage Charges Accrued: Per Tariff;  
plus, Cargo Handling Fee for breakbulk and bulk cargo: \$1.70 per revenue ton;  
plus, Cargo Handling Fee for containers: 25% of the Container Wharfage Tariff rate.

SSA shall provide to the Port, by the fifteenth (15<sup>th</sup>) day of each month, a summary report which provides sufficiently detailed information to determine Gross Receipts. SSA is currently providing three reports of this information. The parties may agree to change the information contained in the reports from time to time and as needed. The Management Fee shall be paid in twelve equal installments of \$75,000 each beginning November 1, 2000, and shall be reconciled to the MAG per Section 2.2 below. The Cargo Handling Fee for breakbulk and bulk cargo shall not escalate during the term of this Amendment No. 2.

### 2.1 **Section 3.6 - Minimum Annual Guarantee and Reconciliation**

Sections 3.6 and 3.8 shall be deleted in their entirety and replaced with a new Section 3.6 as follows:

Section 3.6 - Minimum Annual Guarantee and Reconciliation. For each Contract Year, SSA agrees to guarantee a minimum annual Management Fee ("MAG") of \$900,000. A contract year ("Contract Year") shall be defined as the consecutive twelve-month period between October 1 and September 30 of each year. Sixty (60) days after the end of each Contract Year, SSA shall reconcile the amount due the Port above the MAG, if any, and shall provide a summary report to the Port which documents the Management Fee due the Port by vessel and sailing, accompanied by a check for any additional Management Fee revenue due the Port above the MAG. In addition, within sixty (60) days after the half-year anniversary of the Contract Year, SSA shall provide a summary report of the Management Fee with no payment due. The MAG shall not escalate during the term of this Amendment No. 2.

### 2.2 **Section 3.7 Time and Place of Payments.**

Section 3.7 shall be deleted in its entirety and replaced with the following:



3.7.1 Minimum Guarantee Payment. - SSA shall pay one-twelfth of the MAG to the Port monthly on the first day of the month following the month in which the Gross Receipts were earned, at the following address:

The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, Oregon 97208-4900

3.7.2 Delinquency Charge. - All amounts not paid when due shall bear a Delinquency Charge of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, whichever is less (the "Delinquency Charge"). Such interest shall be charged from the date due until paid. This Delinquency Charge is subject to periodic change, at the Port's sole discretion. No change shall occur, however, without at least thirty (30) days prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to make timely payment.

### **3. SSA'S ENVIRONMENTAL OBLIGATIONS**

#### **3.1 Section 6.12 - Environmental Indemnity**

Section 6.12 is amended to read as follows:

Section 6.12 - Environmental Indemnity. Without in any way limiting the generality of the Section on General Indemnity found at Section 5.1, SSA shall be solely responsible for and agrees to defend, indemnify and hold harmless the Port from and against all Environmental Costs claimed against or assessed against the Port arising, in whole or in part, directly or indirectly, from acts or omissions of any person or entity at or about the Premises after the Effective Date of this Agreement or earlier if caused by SSA or SSA's agents or invitees. This indemnification shall require SSA to reimburse the Port for any diminution in value of the Premises or other adjacent or nearby Port property, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of Terminal 2, or any other Port property, including damages arising from any adverse impact on marketing of space in or near the Terminal, including other Port property. SSA's obligations shall not apply if the Hazardous Substances were deposited at the Terminal by the Port or the Port's agents. SSA shall be solely responsible to assure that no person brings any Hazardous Substances onto the Premises. Notwithstanding the foregoing, SSA shall not be responsible for, and does not indemnify the Port for, any actions of the Port that cause environmental damage or a violation of any Environmental Law at the Terminal.

#### **3.2 Additional Sections**

The following Sections 6.13, 6.14 and 6.15 shall be added:

Section 6.13 - Environmental Audits. As used in this Agreement, the term "Environmental Audit" shall include any environmental assessment as currently or subsequently identified under the American Society for Testing and Measures, or its successor organization, including Phase 1, Phase 2 or Phase 3 site investigations which may or may not also include an



environmental review of existing operations on the Premises or the proposed operations anticipated to be conducted on the Premises.

6.13.1 Initial Audit. An Environmental Audit of the Premises is to be completed by the firm of Dames and Moore. The Port and SSA have approved the scope and procedures of the Initial Audit with the understanding that it shall serve as a baseline for determination of future environmental liability, as described in more detail in Section 6.13.4. The cost of the Initial Audit shall be divided equally between the Port and SSA.

6.13.2 Exit Audit. The Port shall conduct and furnish to SSA an Environmental Audit ("Exit Audit") of the Premises to determine: (i) the environmental condition of the Premises; (ii) whether any Hazardous Substance Release has occurred or exists on or about the Premises; and (iii) whether there is evidence of any violation of Environmental Law or the environmental provisions of this Agreement. The cost of the Exit Audit shall be borne equally by the Port and SSA. The Exit Audit shall be performed not more than ninety (90) days prior to the scheduled Expiration Date of this Agreement. Within thirty (30) days following the expiration of this Agreement, SSA shall provide to the Port a written update to the Exit Audit, as of the last day of the Agreement, indicating clean-up of any contamination found by the Exit Audit that is the responsibility of SSA. In the event this Agreement is terminated prior to the Expiration Date for any reason, the Port shall cause the Exit Audit to be completed within sixty (60) days of such actual termination date of this Agreement.

6.13.3 Audit Requirements. The scope of all Environmental Audits, except the Initial Audit, shall be determined solely by the Port. The scope of the Initial Audit is determined by the Port and SSA. Except for the Initial Audit, if any Environmental Audit performed under this Agreement recommends additional testing or analysis or recommends an additional audit then, unless otherwise agreed to in writing by the Port and SSA, SSA shall perform the additional recommended testing, analysis or audit and the records and results of such additional work shall be considered a part of the underlying audit that triggered the need for the additional work. The Port and SSA shall each receive a signed copy of any Environmental Audit report prepared pursuant to this Agreement.

6.13.4 Presumption. The Initial Audit shall be used as a baseline for determination of future SSA liability. If the presence of a Hazardous Substance, a Hazardous Substance Release, violation of Environmental Law or violation of an environmental provision of this Agreement is discovered or disclosed, that was not discovered or disclosed in the Initial Audit, then a rebuttable presumption will exist, as to matters within the scope of the Initial Audit, that SSA is the cause of and is responsible for all response, remediation, restoration and Environmental Cost arising from such Hazardous Substance, Hazardous Substance Release, violation of Environmental Law or violation of any environmental provision of this Agreement. The presumption established by this Section shall expire after the results of the Exit Audit have been obtained and all response, remediation and full payment of Environmental Cost for which SSA is responsible under this Agreement have been completed.

Section 6.14 – Tenant Environmental Program. The Port holds regular meetings for all of the marine tenants for the purpose of: a) to write a set of Best Management Practices (BMPs) to



cover all operations that have the potential to affect the environment such as equipment maintenance, stormwater management, etc.; b) to educate tenants through guest speakers who are experts in various environmental fields; c) to update tenants on Port issues and activities that may affect them; d) to invite regulatory agencies to brief the group on laws affecting the marine industry, new programs, or changes in procedures; and e) to share with each other common practices, techniques, and solutions in dealing with environmental problems. SSA is asked to attend these meetings. In addition, SSA has had an opportunity to provide input on and review of the BMPs, and acknowledges receipt thereof.

Section 6.15 - Above Ground Storage Tank Agreement: SSA agrees to sign an Above Ground Storage Tank Use Agreement ("AST") for the receipt, handling, storage and distribution of the product within, which is hereby attached as Exhibit A.

#### **4. ARTICLE 7 – INSURANCE**

Amend the following insurance sections:

##### **4.1 Certificates; Notice of Cancellation**

Replace subsection 7.1.1 in its entirety with the following:

7.1.1 Certificates; Notice of Cancellation. On or before the Effective Date, and thereafter during the term of this Agreement, SSA shall provide the Port with current certificates of insurance establishing the existence of all insurance policies required under this Section. No insurance policy may be canceled, non-renewed, or materially revised without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the entire Initial Term and any extension thereof. Insurance allowed to lapse without Port consent shall be deemed an immediate Event of Default under this Agreement. The Port shall also be given certified copies of SSA's policies of insurance, upon request.

##### **4.2 Additional Insured**

Replace subsection 7.1.2 in its entirety with:

7.1.2 Additional Insured. The Port shall be named as an additional insured in each required general liability and marine liability policy. If the provisions of SSA's automobile liability policy treat the Port as an additional insured, an additional insured endorsement naming the Port is not required by subsection 7.2.3. Such insurance shall not be invalidated by any act, neglect or breach of contract by SSA.

##### **4.3 Workers' Compensation**

Subsection 7.2.4 shall be replaced in its entirety with the following:

7.2.4 Workers' Compensation Insurance. SSA shall maintain workers' compensation and employer's liability insurance for all employees subject to the Workers' Compensation Act of the State of Oregon, and to the Longshore and Harbor Workers' Act and/or the Jones Act, if applicable. The amount of employer's liability insurance shall be not less than




\$1,000,000 per accident and \$1,000,000 per employee for disease. In lieu of the coverage required herein, SSA may maintain a self-insurance program approved by the State of Oregon (and/or the U.S. Department of Labor, if applicable) and a policy of excess workers' compensation insurance in an amount required by the approving body, including employer's liability coverage.

**4.4 Waiver of Subrogation**

In line three of Section 7.3, delete the words "All-Risk".

Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

STEVEDORING SERVICES OF AMERICA, INC.      THE PORT OF PORTLAND

By:   
Bruce Whisnant, Senior Vice President

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

APPROVED BY COMMISSION ON:

8/9/00

**AMENDMENT NO. 3  
MANAGEMENT AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
SSA PACIFIC TERMINALS, INC.**

This AMENDMENT NO. 3 is entered into this 21<sup>st</sup> day of February, 2003, by and between THE PORT OF PORTLAND, a port district of the State of Oregon, hereinafter referred to as "Port," and SSA PACIFIC TERMINALS, INC., formerly Stevedoring Services Of America, Inc., a corporation duly organized under the laws of the State of Washington, hereinafter referred to as "SSA."

**RECITALS**

A. The Port and SSA are parties to a Management Agreement, Port Agreement No. 95-160 (FMC Agreement No. 224-010806-004) for the management of the Port's facility at Terminal 2, dated October 1, 1995, and amended on May 15, 1996 and on August 16, 2000 (the "Agreement").

B. Because of the uncertain economic times and the reduction of breakbulk cargo in the Willamette and Columbia Rivers, the parties wish to modify the crane maintenance provisions under the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Agreement and in this Amendment No. 3 (this "Amendment"), the parties agree as follows:

**1. EFFECTIVE DATE**

This Amendment shall be filed by the Port with the Federal Maritime Commission (FMC) and shall be effective upon receipt and approval by the FMC. If the FMC rejects this Amendment, this Amendment shall be of no force or effect.

**2. SECTION 4.9.1 – SECURITY**

Section 4.9.1 shall be amended by adding the following sentence at the end of the paragraph.

"The Port shall provide a security officer to SSA at the rate of \$45.00 per hour for any shift. This rate shall be increased whenever the ILWU Local 28 Security Officer rate is increased by the same percent increase for straight time as provided in the Port of Portland Terminal Tariff No. 7, Item 6500, but shall be effective as of the date such Security Officer rate increase is effective as to the Security Officers, regardless of the date such rate increase is effective under the Tariff."

3. **SECTION 4.9.3 – CRANE MAINTENANCE AND SUPPORT**

Section 4.9.3 be deleted and replaced with the following:

“4.9.3 Crane Maintenance and Support. SSA will provide labor for crane maintenance in accordance with the standards required by OSHA regulations or as directed by the Port’s maintenance department, with the Port being responsible for obtaining certification. SSA will provide all ILWU labor and supervision necessary for crane maintenance and operation. The Port will reimburse SSA for such labor at the then-current labor rates as published by the Pacific Maritime Association (PMA). The Port will supply all equipment parts and electrician support necessary for crane maintenance and operation.”

4. **EFFECT OF AMENDMENT**

Except as otherwise specified in this Amendment No. 3, all of the terms and conditions of the Agreement shall remain in full force and effect.

SSA PACIFIC TERMINALS, INC.

By: Paul Huculak  
Paul Huculak, Senior Vice President

THE PORT OF PORTLAND

By: Bill Wyatt  
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: Judi Kallene  
Counsel for Port of Portland



**AMENDMENT NO. 4  
MANAGEMENT AGREEMENT  
BETWEEN  
THE PORT OF PORTLAND  
AND  
SSA CONTAINERS, INC.**

This AMENDMENT NO. 4 is entered into this 16 day of October, 2003, by and between THE PORT OF PORTLAND, a port district of the State of Oregon, hereinafter referred to as "Port," and SSA CONTAINERS, INC., formerly SSA Pacific Terminals, Inc., formerly Stevedoring Services of America, Inc., a corporation duly organized under the laws of the State of Washington, hereinafter referred to as "SSA."

**RECITALS**

A. The Port and SSA are parties to a Management Agreement, Port Agreement No. 95-160 (FMC Agreement No. 224-010806-004) for the management of the Port's facility at Terminal 2, dated October 1, 1995, and amended on May 15, 1996, on August 16, 2000, and on February 21, 2003 (as amended, the "Agreement").

B. Because of the continuing decline of breakbulk cargo moving across Terminal 2 and the resultant drop in revenues, SSA wishes to make cost saving modifications to the Agreement including the exertion of its right, provided by Section 2.4 of the Agreement, to request reduction of the Minimum Annual Guarantee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in the Agreement and in this Amendment No. 4 (this "Amendment"), the parties agree as follows:

**1. EFFECTIVE DATE**

This Amendment shall be filed by the Port with the Federal Maritime Commission (FMC) and shall be effective upon receipt and approval by the FMC. If the FMC rejects this Amendment, this Amendment shall be of no force or effect.

**2. SECTION 1.2 - USE OF TERMINAL 2**

The second sentence of Section 1.2 shall be deleted and replaced with the following:

SSA will provide and maintain all operating equipment, including cranes (except as provided in Section 4.9.3), and be responsible for the provision of all security at Terminal 2, including that required for any and all cargo located thereon.

**3. SECTION 3.1 - MANAGEMENT FEE**

Section 3.1 of the Agreement shall be deleted in its entirety and replaced with the following:

Section 3.1 - Management Fee. SSA shall pay a management fee ("Management Fee") to the Port based on the sum of the following gross receipts ("Gross Receipts"):

- 100% Dockage Charges Accrued: Per Tariff
- Cargo Handling Fee for breakbulk and bulk cargo: \$1.70 per revenue ton
- Cargo Handling Fee for containers: 25% of the Container Wharfage Tariff rate, provided that the parties mutually may agree to an alternative formula for such cargo handling fee.

SSA shall provide to the Port, by the fifteenth (15<sup>th</sup>) day of each month, a summary report which provides sufficiently detailed information to determine Gross Receipts. The parties may agree to change the information contained in the reports from time to time and as needed. The Cargo Handling Fee for breakbulk and bulk cargo shall not escalate during the remainder of the Term of the Agreement.

#### **4. SECTION 3.6 – MINIMUM ANNUAL GUARANTEE AND RECONCILIATION**

Section 3.6 of the Agreement shall be deleted in its entirety and replaced with the following:

For each contract year, SSA agrees to guarantee a minimum annual Management Fee ("MAG") of \$450,000. A contract year ("Contract Year") shall be defined as the consecutive twelve-month period between October 1 and September 30 of each year. Beginning November 1, 2003, the MAG shall be paid in twelve equal installments of \$37,500 each for the previous month, and revenue shall be reconciled annually as follows: Sixty (60) days after the end of each Contract Year, SSA shall compare the Gross Receipts for such Calendar Year against the MAG, and shall pay any amount above the MAG to the Port. At the time of such payment SSA shall also provide a summary report to the Port which documents the Management Fee due the Port by vessel and sailing for the previous Calendar Year. In addition, within sixty (60) days after the end of the first six (6) months of each Contract Year, SSA shall provide a summary report of the Management Fee for such six-month period with no payment due. The MAG shall not escalate during the remainder of the Term of the Agreement.

#### **5. SECTION 4.9.1 – SECURITY**

Section 4.9.1 of the Agreement shall be deleted in its entirety and replaced with the following:

SSA shall be solely responsible for and shall maintain appropriate security for Terminal 2 as well as for any and all charges and costs associated therewith. Beginning October 1, 2003, the Port shall provide a security officer to SSA, as needed, at a rate equal to the full cost of the security officer plus 10 percent (10%). The Port will notify SSA of the actual per hour rate when current negotiations with ILWU Local 28 have concluded. This rate shall be adjusted and effective on the same date as any adjustment occurs to the ILWU Local 28 Security Officer rate during the remainder of the Term of the Agreement.

#### **6. SECTION 4.9.3 – CRANE MAINTENANCE AND SUPPORT**

Section 4.9.3 of the Agreement shall be deleted in its entirety and replaced with the following:

**4.9.3 Crane Maintenance and Support.** The Port will provide labor and supervision for crane maintenance in accordance with the standards required by OSHA regulations and the Port's maintenance department, with the Port being responsible for obtaining certification. The Port



will also supply all equipment, parts, and electrician support necessary for crane maintenance and operation. Whenever SSA uses the cranes in any operation, SSA will be responsible for ILWU labor and supervision, at SSA's sole cost, during the operating period.

**7. EFFECT OF AMENDMENT**

Except as otherwise specified in this Amendment No. 4, all of the terms and conditions of the Agreement as previously amended shall remain in full force and effect.

SSA PACIFIC TERMINALS, INC.

By: Paul Huculak  
Paul Huculak, General Manager

THE PORT OF PORTLAND

By: Bill Wyatt  
Bill Wyatt, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

By: Jane Killeen  
Counsel for Port of Portland



REVENUE SHARING AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND

This REVENUE SHARING AGREEMENT is entered into effective as of November 1, 1995, between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("SAUSE") and THE PORT OF PORTLAND, an Oregon port district (the "PORT").

RECITALS:

A. SAUSE intends to use the PORT's Terminal 2 as a regularly scheduled Columbia River public port of call for ocean barge operations, handling both eastbound and westbound cargo, but excluding bulk cargoes.

B. The PORT wishes to offer SAUSE financial incentives to ensure a minimum annual number of port calls by SAUSE.

NOW, THEREFORE, the PORT and SAUSE agree as follows:

**1. TERM**

1.1. Initial Term.

This Agreement shall be for a term of two years (the "Initial Term"), beginning November 1, 1995, and continuing through October 31, 1997. As used in this Agreement, "Contract Year" shall mean the period from November 1 through October 31 each year.

1.2. Additional Term.

At the end of the Initial Term, SAUSE and the PORT agree to negotiate in good faith toward three subsequent one-year renewals to this Agreement, on terms mutually agreeable to the parties; provided, however, that nothing in this Agreement shall obligate either party to enter into any renewal past the Initial Term, and provided further that this Section 1.2 shall not create rights enforceable in any judicial, administrative or arbitration proceeding.

**2. USE OF PREMISES**

The PORT shall have no obligation to provide marine terminal services to SAUSE pursuant to this Agreement. SAUSE shall be responsible for obtaining such services by separate arrangement with the manager or terminal operator designated by the PORT to manage Terminal 2 (the "Terminal Operator"), and the PORT shall have no liability whatsoever for the Terminal Operator's actions or inactions with respect to such services. SAUSE shall use such portions of the PORT's Terminal 2 as may be designated by the Terminal Operator (the "Premises").

### **3. DOCKAGE**

#### **3.1. Applicable Rates.**

SAUSE's operations on or over the Premises shall be subject to the PORT's Terminal Tariff No. 7, as it may be supplemented, reissued or replaced from time to time (the "Tariff"). SAUSE agrees to pay all applicable port charges provided at SAUSE's request at rates published in the Tariff, except as otherwise stated in this Agreement and except to the extent SAUSE and the Terminal Operator have entered into an agreement setting forth different rates.

#### **3.2. Revenue Sharing.**

Subject to Section 3.3, the PORT shall rebate to SAUSE thirty percent (30%) of all dockage revenues which, pursuant to the terms of any agreement in place between the PORT and the Terminal Operator, are received by the PORT as a result of SAUSE's operations on the Premises during the Initial Term of this Agreement. The PORT shall remit such rebate to SAUSE within 45 days following the end of each Contract Year.

#### **3.3. Minimum Annual Port Calls.**

SAUSE agrees to provide a minimum of not less than fifteen (15) barge calls at the Premises during each Contract Year (the "Minimum Annual Port Calls"). If SAUSE fails to provide the Minimum Annual Port Calls during any Contract Year, SAUSE shall not be entitled to any rebate pursuant to Section 3.2 for that Contract Year.

### **4. FORCE MAJEURE**

#### **4.1. Force Majeure Event.**

In the event that SAUSE's performance under this Agreement is prevented or made impracticable for a period of twenty-one (21) days or more by occurrences beyond SAUSE's control, including but not limited to strikes, labor disturbances, riots, fire, governmental action, war, acts of God, or other causes of similar nature, the Minimum Annual Port Calls required pursuant to Section 3.3 shall be reduced by one barge call for each full 21-day period that performance remains prevented or impracticable; provided, however, that relief pursuant to this Section 4 shall be available only to the extent such occurrences are not due to SAUSE's fault or negligence, and only to the extent SAUSE has used reasonable diligence in seeking to overcome any obstacles resulting from such occurrences. In the event of an occurrence subject to this Section 4, SAUSE shall resume performance within a reasonable time after such obstacles are removed.

#### **4.2. Termination Due to Force Majeure.**

In the event that performance is (or with reasonable certainty will be) prevented or made impracticable as specified in Section 4.1 for a period of 60 days or more, either party may terminate this Agreement by delivering to the other party 30 days written notice of its intent to do



so. In the event of termination pursuant to this Section, the number of Minimum Annual Port Calls as specified in Section 3.3 shall be reduced pro-rata for that portion of the Contract Year remaining after termination.

## **5. RULES, REGULATIONS AND LAWS**

SAUSE agrees to comply with all applicable rules, regulations and ordinances of the PORT, including rules and regulations adopted by the Executive Director or the Executive Director's designee. SAUSE further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations, and SAUSE further agrees to indemnify and hold harmless the PORT, its Commissioners, officers, agents, and employees from any liability or penalty which may be imposed by governmental authorities by reason of any asserted violation of the foregoing by SAUSE or its agents or employees.

## **6. NOTICES**

All notices required under this Agreement shall be sent by certified mail, postage prepaid, addressed as indicated in this section, provided that either party may change its address for the receipt of notices by notice to the other party in writing. Until changed, notices shall be sent to the PORT at The Port of Portland, Attn.: Marine Director, P.O. Box 3529, Portland, Oregon 97208, and to SAUSE at Sause Bros. Ocean Towing Co., Inc., 155 E. Market Avenue, Coos Bay, Oregon 97420. Notices shall be deemed delivered as of the date of mailing.

## **7. INDEMNIFICATION**

SAUSE agrees to indemnify, save harmless, and defend (using counsel satisfactory to the PORT) the PORT, its Commissioners, directors, officers, and employees from and against any and all claims, damages, expenses, costs, fees, and suits, based upon or arising out of injuries or damages to third persons or property, actually or allegedly caused by or resulting from, directly or indirectly, in whole or in part, SAUSE'S use or occupancy of or activities on the Premises. This indemnity shall not extend to that portion of any claim or claims directly arising from or caused by the negligence of the PORT.

## **8. OTHER PROVISIONS**

### **8.1. Assignment.**

SAUSE shall not assign any of its rights under this Agreement

### **8.2. Waivers.**

No waiver by the Port of any of the terms, conditions or covenants contained in this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition or covenant, nor of strict and prompt performance thereafter.



8.3. Survival.

Termination of this Agreement shall not affect any right, obligation or liability of either party which accrued prior to termination, nor any right, obligation or liability which by its nature survives termination.

8.4. Attorney Fees.

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the appellate courts.

8.5. Applicable Law.

This Agreement shall be construed according to the laws of the State of Oregon and the United States, and jurisdiction shall be in the circuit court of the State of Oregon for Multnomah County.

8.6. Taxes and Governmental Charges.

SAUSE agrees to pay any and all lawful taxes, assessments or governmental charges that may be assessed or levied by any governmental upon any interest which SAUSE acquires under this Agreement or any possessory right which SAUSE may have in or on the Premises.

8.7. Modifications.

This Agreement may be modified, altered or amended only by a writing signed by authorized representatives of both parties.

SAUSE BROS. OCEAN TOWING CO, INC.

By: 

Dale Sause  
President

THE PORT OF PORTLAND

By: 

Mike Thorne  
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY:

By: 

Counsel  
Port of Portland

APPROVED BY COMMISSION

Date: \_\_\_\_\_

AMENDMENT NO. 1  
TO  
REVENUE SHARING AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND



This Amendment No. 1 ("Amendment") dated as of the 17<sup>th</sup> day of October, 1996, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

The Port and Sause entered into a Revenue Sharing Agreement effective November 1, 1996, Port Agreement No. 96-128 (the "Agreement"). The parties now wish to amend the Agreement

NOW THEREFORE, based on the foregoing, the Port and Sause agree as follows:

1. Section 1.1 shall be deleted in its entirety and replaced with the following:

1.1 Initial Term.

This Agreement shall be for a term of approximately two years (the "Initial Term"), beginning November 1, 1995, and continuing through and including September 30, 1997. As used in this Agreement, "Contract Year" shall mean the period from October 1 through and including September 30 of each year.

2. There shall be no adjustment as a result of this Amendment in the Minimum Annual Port Calls for the initial Contract Year because Sause has already met the obligation of 15 barge calls within the shorter initial Contract Year established pursuant to this Amendment.


3. Capitalized terms used but not otherwise defined herein shall have the same meanings as in the Agreement.


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4. Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

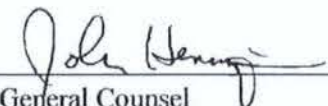
SAUSE BROS. OCEAN TOWING CO.,  
INC.

THE PORT OF PORTLAND

By:   
Dale Sause, President

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL  
SUFFICIENCY

By:   
Assistant General Counsel



**AMENDMENT NO. 2  
TO  
REVENUE SHARING AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND**

This Amendment No. 2 ("Amendment") dated as of the 3rd day of October, 1997, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Sause entered into a Revenue Sharing Agreement effective November 1, 1995, Port Agreement No. 96-128, as amended by Amendment No. 1 dated as of October 17, 1996 (as amended, the "Agreement").

B. The parties now wish to extend the term for one additional year.

NOW THEREFORE, based on the foregoing, the Port and Sause agree as follows:

**1. TERM**

The term of the Agreement shall be extended for an additional one year ending September 30, 1998, upon the same terms and conditions as set forth in the Agreement.

Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

**SAUSE BROS. OCEAN TOWING CO., THE PORT OF PORTLAND  
INC.**

By: [Signature]

By: [Signature]  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: [Signature]  
Counsel for the Port of Portland

**AMENDMENT NO. 3  
TO  
REVENUE SHARING AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND**

This Amendment No. 3 ("Amendment") dated as of the 5<sup>th</sup> day of November, 1998, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Sause entered into a Revenue Sharing Agreement effective November 1, 1995, Port Agreement No. 96-128, as amended by Amendment No. 1 dated as of October 17, 1996 and Amendment No. 2 dated as of October 3, 1997 (as amended, the "Agreement").

B. The parties now wish to extend the term for one additional year.

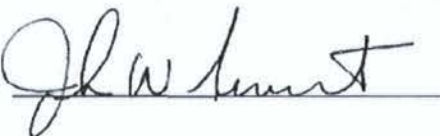
NOW THEREFORE, based on the foregoing, the Port and Sause agree as follows:

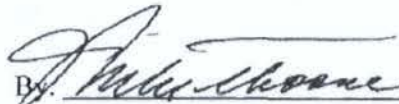
**1. TERM**

The term of the Agreement shall be extended for an additional one year ending September 30, 1999, upon the same terms and conditions as set forth in the Agreement.

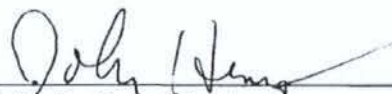
Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

**SAUSE BROS. OCEAN TOWING CO.,    THE PORT OF PORTLAND  
INC.**

By: 

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for the Port of Portland

**AMENDMENT NO. 4  
TO  
REVENUE SHARING AGREEMENT  
BETWEEN  
SAUSE BROS. OCEAN TOWING CO., INC.  
AND  
THE PORT OF PORTLAND**

This Amendment No. 4 ("Amendment") dated as of the 25th day of February, 2000, is entered into by and between SAUSE BROS. OCEAN TOWING CO., INC., an Oregon corporation ("Sause") and the PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The Port and Sause entered into a Revenue Sharing Agreement effective November 1, 1995, Port Agreement No. 96-128, as amended by Amendment No. 1 dated as of October 17, 1996 and Amendment No. 2 dated as of October 3, 1997, and Amendment No. 3 dated as of November 5, 1998 (as amended, the "Agreement").

B. The parties now wish to extend the term for one additional year.

NOW THEREFORE, based on the foregoing, the Port and Sause agree as follows:

**1. TERM**

The term of the Agreement shall be extended for an additional one year ending September 30, 2000, upon the same terms and conditions as set forth in the Agreement.

Except as amended hereby, all other terms of the Agreement shall remain in full force and effect.

**SAUSE BROS. OCEAN TOWING CO., THE PORT OF PORTLAND  
INC.**

By: JLW Sause

By: Mike Thorne

Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: V. F. Sales

Counsel for the Port of Portland



---

# DOCKAGE REBATE AGREEMENT

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*BETWEEN*

THE PORT OF PORTLAND

*AND*

MEDBULK MARITIME CORP.

Dated as of: April 1, 1997

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**DOCKAGE REBATE AGREEMENT  
BETWEEN  
MEDBULK MARITIME CORP.  
AND  
THE PORT OF PORTLAND**

THIS DOCKAGE REBATE AGREEMENT ("Agreement") is made and entered into at Portland, Oregon, by and between MEDBULK MARITIME CORP., referred to hereinafter as "MedBulk," and THE PORT OF PORTLAND, a Port District existing under the laws of the State of Oregon, hereinafter called the "Port."

**RECITALS**

A. The Port and Stevedoring Services of America ("SSA") are parties to a Management Agreement ("Management Agreement") dated October 1, 1995, pursuant to which SSA operates the Port's Marine Terminal No. 2 located in Portland, Oregon (the "Terminal").

B. Under the terms of the Management Agreement, the Port receives from SSA one-hundred percent of all dockage revenues collected by SSA from ships using the Terminal.

C. In order to provide MedBulk an incentive to use Terminal 2 as its Columbia River Port of Call for all forestry products and general cargo operations, the Port is willing to rebate a portion of dockage fees received from SSA on account of MedBulk's use of the Terminal, subject to the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements set forth to be kept and performed by the parties, the Port and MedBulk agree as follows:

**1. TERM**

This Agreement shall be for an initial term of one year beginning April 1, 1997, continuing through and including March 31, 1998, and shall automatically renew for two additional terms of one year each, unless a party terminates the Agreement by notice to the other given at least forty-five (45) days prior to the end of the then current Contract Year, in which case the Agreement shall terminate at the end of such Contract Year. As used herein, "Contract Year" shall mean the period from April 1 through March 31 of each year during the term of this Agreement.

**2. REBATE**

**2.1 Revenue Sharing**

MedBulk shall receive a 10 percent (10%) rebate on dockage collected by SSA with respect to MedBulk's operations at the Terminal during a Contract Year so long as MedBulk has satisfied all of the conditions set forth in Section 2.2 with respect to such Contract Year. The Port shall rebate to MedBulk the amount of rebate owing within 60 days after the close of the Contract Year.



## **2.2 Conditions of Rebate**

In the event that MedBulk fails to satisfy either condition set forth in this Section 2.2, MedBulk shall not be eligible for any rebate for the Contract Year during which MedBulk fails to satisfy the condition:

### **2.2.1 Minimum Annual Number of Port Calls**

MedBulk guarantees a minimum annual number of ten (10) calls (Minimum Annual Guarantee") at the Terminal by MedBulk ships per Contract Year.

### **2.2.2 Port of Call**

MedBulk shall use the Terminal as its Columbia River Port of Call for all forestry products and general cargo operations during the term of this Agreement.

## **2.3 Projected Annual Port Calls**

As of the date of this Agreement, MedBulk anticipates the number of vessel calls at the Terminal to be approximately twelve (12) per Contract Year.

## **3. APPLICABILITY OF TARIFF**

All of MedBulk's operations at or over the Terminal shall be subject to the Port's then current Terminal Tariff, as filed with the Federal Maritime Commission (FMC), and all supplements thereto and reissues thereof ("Tariff"), except as modified by the express terms of this Agreement and as modified by any agreement between SSA and MedBulk. The Tariff, as so modified, is hereby incorporated by reference and made a part of this Agreement as if fully set out herein. MedBulk hereby acknowledges receipt from the Port of a copy of the Tariff as in effect on the date of this Agreement.

## **4. FORCE MAJEURE**

**4.1** The duties and obligations of each of the parties hereunder may be suspended during such time as performance by either party is prevented or made impracticable by occurrences beyond the control of the party affected, and to the extent such occurrences are not due to the fault or negligence of the party affected. Such occurrences include but are not limited to strikes, labor disturbances, riots, flood, fire, governmental action, war, acts of God, or other circumstances of similar nature. The party seeking relief under this clause is required to have used reasonable diligence in overcoming such obstacles, and performance shall resume within a reasonable time after the obstacle is removed.

**4.2** The foregoing shall not be considered a waiver of either party's obligation under this Agreement, and upon the occurrence of a Force Majeure event, the Minimum Annual Number of Calls shall be reduced on a pro-rata basis reflecting the period during which the Force Majeure condition remains in effect.

**4.3** In the event that performance is prevented or made impractical under the provisions of Section 4.1, or there is reasonable certainty that performance will be prevented for

a period of 60 days or more, either party may terminate this Agreement by delivering to the other party 30 days' written notice of its intent to do so.

## 5. NOTICES

All notices required or desired to be given under this Agreement shall be in writing and may be delivered by hand delivery or by placement in the U.S. mail, postage prepaid, as certified mail, return receipt requested, addressed

to the Port at:                   The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn.: Marine Contracts Administrator

and a copy to:                   The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn.: Legal Department

and to MedBulk at:               MedBulk Maritime Corp.  
180 Howard Street, Suite 360  
San Francisco, CA 94105  
Attn.: Capt. Massimo Juris

Any notice delivered by hand delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth in this Agreement shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

## 6. WAIVER

No waiver by either party at any time of any of the terms, conditions, covenants, or agreements of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. Termination under any provision of this Agreement shall not affect any right, obligation, or liability of MedBulk or the Port which accrued prior to such termination.

## 7. ATTORNEY FEES

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal, as allowed by the Appellate Court.



03/26 16:32 1997

FROM:

9 240 2009

TO: .654321

PAGE: 2

03/26/97

14:51

9 240 2009

POP T-6 ADMIN

002/002

### 8. ASSIGNMENT

This Agreement is personal to MedBulk, and therefore, no interest in this Agreement may be assigned, pledged, transferred, or mortgaged without the prior written consent of the Port (which consent the Port may withhold or condition in its Port's sole discretion). Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law.

### 9. APPLICABLE LAW

It is expressly understood and agreed that this Agreement and all questions arising thereunder shall be construed according to the laws of the State of Oregon, and jurisdiction shall be the Circuit Court of the State of Oregon, Multnomah County.

### 10. NO ADDITIONAL PENALTIES

There are no additional penalties to MedBulk for failure to meet the Minimum Annual Guarantee other than loss of the rebate for that Contract Year.

### 11. MODIFICATIONS

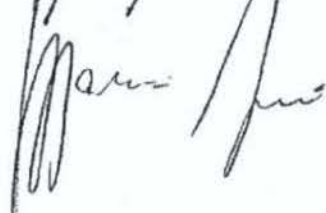
This Agreement may be modified, altered, or amended only with the express written consent of both parties.

MEDBULK MARITIME CORP.

By: 

Capt. Massimo Juris

03/26/97



THE PORT OF PORTLAND

By: 

Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: 

Assistant General Counsel





## Port of Portland

Box 3529, Portland, Oregon 97208, U.S.A.  
503/231-5000

H. Morton  
S. Hutchison  
SSA file

March 20, 1998

*abs/rbk*

Captain Massimo Juris  
MedBulk Maritime Corp.  
180 Howard Street, Suite 360  
San Francisco, CA 94105

### AUTOMATIC RENEWAL DOCKAGE REBATE AGREEMENT #97-079

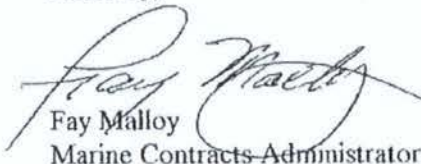
Dear Captain Juris:

I am pleased to see that, pursuant to Section 1 of the above named agreement, your contract with the Port of Portland will automatically renew as of April 1, 1998. This resets the expiration date to March 31, 1999, with one more automatic renewal of one year.

All terms of the agreement remain in force, so MedBulk will continue to receive a 10 percent (10%) rebate on dockage collected by SSA as long as it makes the minimum annual number of ten (10) calls per contract year and uses Terminal 2 for all forestry products and general cargo operations during the term of the agreement.

Please feel free to call me at 1-800-547-8411, ext. 2013, if you have any questions or concerns regarding this matter.

Sincerely,

  
Fay Malloy  
Marine Contracts Administrator

cc: Francois Elmaleh



# Port of Portland

Box 3529, Portland, Oregon 97208, U.S.A.  
503/231-5000

H. Winton  
L. Lum  
F. Elmaleh  
D. Lipscomb  
SSA file

February 17, 1999

|                        |                 |              |              |
|------------------------|-----------------|--------------|--------------|
| Post-it® Fax Note 7671 |                 | Date 5-25-99 | # of pages 7 |
| To Bob Lipscomb        | From Fay Mallon |              |              |
| Co./Dept.              | Co.             |              |              |
| Phone #                | Phone #         |              |              |
| Fax #                  | Fax #           |              |              |

Captain Massimo Juris  
Medbulk Maritime Corp.

180 Howard St., Suite 360  
San Francisco, CA 94107

456 Montgomery St., Ste. 400

## AUTOMATIC RENEWAL DOCKAGE REBATE AGREEMENT #97-079

Dear Captain Juris:

I am pleased to see that, pursuant to Section 1 of the above named agreement, your contract with the Port of Portland will automatically renew as of April 1, 1999. This resets the expiration date to March 31, 2000, and this is the last automatic renewal provided for in this contract.

All terms of the agreement remain in force, so MedBulk will continue to receive a 10 percent (10%) rebate on dockage collected by SSA as long as it makes the minimum annual number of ten (10) calls per contract year and uses Terminal 2 for all forestry products and general cargo operations during the term of the agreement.

Please feel free to call me at 1-800-547-8411, ext. 2011, if you have any questions or concerns regarding this matter.

Sincerely,

Alice Patten  
Contracts Administrator  
Marine Division

cc: Francois Elmaleh

Kathy Falconer

Port of Portland offices located in Portland, Oregon, U.S.A.  
Chicago, Illinois; Washington, D.C.; Hong Kong; Seoul; Taipei; Tokyo

Printed on recycled paper

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# OFFICE LEASE

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*BETWEEN*

THE PORT OF PORTLAND

(the Lessor)

*AND*

GULF & ATLANTIC MARITIME SERVICES, INC.

(the "Lessee")

Dated as of: April 21, 1997

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**OFFICE LEASE  
GULF & ATLANTIC MARITIME SERVICES, INC.  
T-2 ADMINISTRATION BUILDING**

THIS LEASE is made and entered into on the 21<sup>st</sup> day of April 1997, between GULF & ATLANTIC MARITIME SERVICES, INC., organized and existing under the laws of the state of Delaware, ("Lessee") and THE PORT OF PORTLAND, a port district of the State of Oregon ("Port").

**RECITALS**

A. The parties, intending to be legally bound by the terms of this Lease, agree as follows:

**1. PREMISES**

**1.1 Description of Premises**

The Port leases to Lessee, and Lessee leases from the Port, office space located on the third floor of the T-2 Administration Building (the "Building"). The rentable area of the space within the Building, for purposes of this Lease, is agreed to be six hundred and eighty-two (682) square feet (the "Premises"). The Premises is more particularly described and shown on Port Drawing No. T-2 97-1, attached as Exhibit A.

**1.2 Use of Premises**

**1.2.1 Permitted Use and Compliance with all Laws**

Lessee shall use the Premises for office space. No other use may be made of the Premises without the prior written approval of the Port, which approval shall be in the sole discretion of the Port. Use must be in conformance with applicable Port Ordinances and with all applicable laws, ordinances, rules and regulations of state, federal or other public government authority. Lessee shall promptly provide to the Port copies of all communications from any such government entity which relate to Lessee's noncompliance or alleged noncompliance with any law or government requirement relating to Lessee's use of the Premises.

**1.2.2 Limits on Use**

Lessee shall not, without the prior written consent of the Port, use any device which would violate any local noise ordinance or cause substantial vibration, fumes or electronic interference on the Premises. No satellite or cable receiving equipment, electronic transmitting devices (other than telephone, telex or telecopier machines) shall be installed, maintained or operated on the Premises except with written approval of the Port. Lessee shall not overload the electrical circuits from which Lessee obtains current. Electrical service furnished will be 110 volts unless different service already exists in the Premises. Lessee shall provide Lessee's own surge protection for power furnished to computers and any other electronic devices/equipment approved for use by the Port. If Lessee needs to use equipment other than standard office equipment, Lessee must obtain the Port's written permission to operate such equipment during specified hours. Lessee shall not use or permit anyone else to use the Premises, or permit



anything to be done in the Premises, which: (i) adversely affects or is likely to adversely affect the Building or the Premises or any element or part of the Building or the Premises, or the operations of the Building or the Premises; (ii) creates any condition that is a safety hazard or violates OSHA regulations; (iii) creates a condition that may increase the rate of fire insurance for the Building or prevent the Port from taking advantage of any ruling of an insurance rating bureau that would allow the Port to obtain reduced rates for its insurance policies or violates any requirements of Lessee's insurance carrier; (iv) creates a hazard or a nuisance, or disturbs other tenants or occupants of the Building.

### **1.2.3 Appurtenant Rights**

Lessee, Lessee's customers, employees, and invitees shall have the nonexclusive right to use the Building's Common Areas in common with the Port and with others to whom the Port has granted or may grant such right. The term "Common Areas" generally means existing building hallways, lobby areas, bathrooms, sidewalks, the parking area and any other areas designated as Common Areas by the Port.

## **2. TERM**

### **2.1 Term**

The term of this Lease ("Lease Term"), shall commence on April 21, 1997, ("Commencement Date") and shall continue through and including April 20, 1998, ("Expiration Date") unless sooner terminated pursuant to the terms of this Lease.

### **2.2 Extension Option**

So long as no uncured Event of Default (defined in Section 10) exists under this Lease, and so long as the Port desires to rent space in the Building, Lessee shall have the option to extend (the "Extension Option") the Lease Term for one (1) additional term of two years. The terms and conditions of the Lease for the Extension Option shall be identical with those for the initial Lease Term except: (i) Basic Rent shall be recalculated pursuant to Section 3.2; and (ii) the Port may elect to require amendments to this Lease to incorporate any provisions from the Port's then current leases considered to be standard provisions by the Port. If the Port does require amendments to the Lease, the Port shall give written notice to Lessee within fifteen (15) days after receipt of Lessee's notice exercising the Extension Option. Along with such notice, the Port shall send Lessee a copy of the proposed amendments to the Lease. If the Port makes such election, Lessee shall have ten (10) days after delivery of the Port's notice to withdraw Lessee's exercise of the Extension Option by written notice to the Port; otherwise, Lessee shall be deemed to have accepted the Port's required changes. Lessee must exercise Lessee's Extension Option by giving the Port written notice, not less than one hundred eighty (180) days nor more than two hundred seventy (270) days prior to the last day of the expiring term.

## **3. RENT**

### **3.1 Basic Rent and Additional Rent**

Lessee shall pay to the Port a monthly rent, referred to as "Basic Rent." All other sums which become payable by Lessee to the Port shall be considered "Additional Rent" due under



this Lease. "Rent," as used herein, shall mean all such Additional Rent, together with Basic Rent. Rent due shall be as follows:

| Rent            | Square Feet | Rate Per Square Foot | Annual Amount | Monthly Amount |
|-----------------|-------------|----------------------|---------------|----------------|
| Basic Rent      | 682         | \$10.12              | \$6,901.84    | \$575.15       |
| Additional Rent | 682         | \$6.25               | \$4,262.50    | \$355.21       |
| Totals          | 682         | \$16.37              | \$11,164.34   | \$930.36       |

Basic Rent for the first month and the Security Deposit shall be paid upon execution of this Lease.

### **3.2 Adjustment to the Basic Rent**

The Basic Rent shall be adjusted at the beginning of each third year to an amount calculated in accordance with the calculation of adjustment described in Section 3.2.1, provided that in no event shall Basic Rent be adjusted downward.

#### **3.2.1 Calculation of Adjustment**

Basic Rent shall be adjusted by multiplying the Basic Rent then in effect by the Port's calculation of the change from December 1996 to December just prior to the new Lease year in which the calculation is to occur of the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for All Urban Consumers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U").

#### **3.2.2 Change in Index**

In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84=100)" published by the Bureau of Labor Statistics or in the monthly Labor Review of the United States Department of Labor shall be used for making the computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by the Port shall be used for making the computation.

#### **3.2.3 Change in Base Year**

If the CPI-U base year 1982-84 (or other base year for a substituted index) is changed, the denominator figure used in making the computation in this Section 3.2 shall accordingly be changed so that all increases in the CPI-U from the base year are taken into account notwithstanding any such change in such CPI-U base year.

### **3.3 Security Deposit**

In addition to payments of Basic Rent, Lessee shall deposit with the Port, upon or prior to execution of this Lease, cash in the amount of \$930.36 as a security deposit (the "Deposit"). The



Deposit shall not earn interest, shall not be considered to be held in trust for Lessee and shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by Lessee, and may be commingled with other funds of the Port. The Port may, but shall not be obligated to, apply all or any part of the Deposit to Rent or other amount not paid by Lessee when due or any amount which the Port may expend or incur by reason of Lessee's failure to perform any obligation under this Lease. If the Port applies all or any part of the Deposit, Lessee shall, upon demand, immediately replenish the Deposit to its original full amount. If Lessee fully performs all of Lessee's obligations under this Lease, the Deposit, or any balance remaining, shall be returned to Lessee within thirty (30) days after the expiration of this Lease and delivery to the Port of possession of the Premises as required by this Lease. In the event of any sale of the Port's interest in the Premises, the Port may transfer the Deposit to the purchaser and the Port shall have no further liability to refund the Deposit. The Deposit shall be proportionately adjusted upward with every adjustment to Basic Rent as provided below. In the event that the Deposit is in a form other than cash, the Deposit shall be made pursuant to a written agreement between Lessee and the Port containing such terms and conditions as are acceptable to the Port. In the event that the Port and Lessee are unable to agree on the terms of the agreement respecting the Deposit on or before the date such Deposit is due, the Lessee shall deposit cash.

### **3.4 Additional Rent**

As Additional Rent, Lessee shall pay a per-square-foot rate to cover operating expenses for the Premises. "Operating Expenses" are costs of operating, repairing, servicing and maintaining the Building and Common Areas, and include real property taxes; all water and sewer charges; the cost of heating and electricity provided to the Building (including the Premises); janitorial and cleaning supplies and services; costs of maintenance and landscaping services for the exterior Common Areas; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses and permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; and the annual amortized capital improvement costs (amortized over a period of time and at an interest rate selected by the Port). Operating Expenses shall be calculated in accordance with the Port's standard real estate accounting practices. The Port may include in Operating Expenses any costs attributable to support services provided by the Port to administer the Port's obligations relating to the Building and Common Areas, and costs incurred by the Port in connection with the accounting and billing of Operating Expenses. Effective as of July 1 of each year, the Port shall announce the revised per-square-foot costs of the estimated Operating Expenses for the upcoming Fiscal Year (currently July 1 through June 30) and Lessee's monthly rent payment shall then be adjusted to reflect the new Operating Expense amount. If Lessee makes payments before the new rate is announced, Lessee will be invoiced the difference and will pay that difference per the invoice terms. The amount of Operating Expenses set each July represents the Port's best estimate of what expenses will be for the coming year. It is therefore agreed between the parties that if the estimated amount is too low, no deficiency will be assessed and if the estimated amount is too high, no refund will be made.



### **3.5 Real Property Tax**

"Real Property Taxes" means all taxes and assessments of any public authority against the Building and the real property on which it is located, including rent taxes, gross receipt taxes, business license taxes and fees for permits for the Building, and any other tax or charge levied wholly or partly in lieu thereof, and the cost of contesting the same. Lessee shall pay monthly, on the first day of every month, together with Basic Rent and as a part of Lessee's share of Operating Expenses, "Lessee's Proportionate Share" of Real Property Taxes. If any portion of the Building is occupied by a tax-exempt tenant so that the Building has a partial tax exemption under Oregon law, then, in computing Real Property Taxes (or any increase thereof), Real Property Taxes shall be calculated taking that exemption into account. If a separate assessment or identifiable tax increase arises because of Lessee's improvements to Lessee's Premises, then Lessee shall pay one hundred percent (100%) of such assessment or increase attributable to those improvements made by Lessee. Notwithstanding that Real Property Taxes will be paid to the Port on a monthly basis as part of the Operating Expense charge, because Real Property Taxes are assessed by the County on an annual basis, Lessee shall be responsible for Lessee's Proportionate Share of the taxes for the entire tax year (currently July 1 - June 30) even if Lessee's Lease terminates prior to the expiration of the tax year. However, if the Premises is leased to another tenant for the balance of any tax year, then those taxes paid by the new tenant will be used to offset those taxes paid by Lessee.

### **3.6 County Rights**

Lessee agrees that the county to which Lessee is obligated to pay property taxes on account of this Lease or Lessee's possession or use of the Premises shall be an intended third party beneficiary of Lessee's obligation under this Lease to pay such taxes, and may, with the Port's prior written consent, enforce such obligation directly, by an action for a money judgment, without affecting any right or remedy available under this Lease or otherwise. No rights of the county under this Section shall be construed to affect or limit the Port's ability to alter, amend, delete, rescind, or add any provision in this Lease, to enforce or waive enforcement of any of its terms, or to substitute or release any party to this Lease, without notice to any county.

### **3.7 Other Taxes**

Lessee shall pay when due, all taxes and fees assessed against and levied against Lessee's fixtures, equipment, furnishings and personal property located in or on the Premises or elsewhere in the Building or Common Areas. Lessee shall cause Lessee's trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of the Port. If any of Lessee's personal property is assessed with the Port's real property, Lessee shall pay to the Port the taxes attributable to Lessee's own property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.



### **3.8 Time and Place of Rent Payment**

Lessee shall make a combined payment of Basic Rent and Operating Expenses, in advance, on or before the first day of each calendar month ("Due Date") without offset, abatement or deduction, to the Port at the following address or such other place as the Port may later designate:

The Port of Portland  
P.O. Box 5095  
Portland, Oregon 97208-5095

All other Rent payments shall also be made to this address on or before the designated Due Date set forth herein.

### **3.9 Delinquency and Administrative Charges**

All amounts not paid by Lessee within seven (7) days of the Due Date shall bear a delinquency charge of eighteen percent (18%) per annum or, if less, the maximum rate of interest allowed by law, from the date of delinquency until paid. The delinquency charge on the overdue amounts shall be subject to periodic change in the sole discretion of the Port. The Port's failure to impose a delinquency charge shall not be a waiver of the Port's other rights and remedies for such delinquent payment, nor of the Port's right to later charge and collect a charge for such delinquency. Acceptance of any delinquency charge by the Port shall in no event constitute a waiver of Lessee's default with respect to the overdue amount in question, nor prevent the Port from exercising any of the other rights and remedies granted under this Lease or by law.

### **3.10 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent shall not constitute a waiver of any Event of Default (defined in Section 10.1 below). Endorsements or statements on checks of waiver, compromise, payment in full or the like shall have no legal effect. Lessee shall nonetheless remain in default and shall also remain obligated to pay all Rent due even if the Port has accepted such partial or late payment.

## **4. LESSEE'S OTHER OBLIGATIONS**

### **4.1 Construction of Improvements**

#### **4.1.1 Port Approval**

Lessee shall undertake no construction, alteration, or changes ("Work") on or to the Premises without the prior written consent of the Port. The Port may require Lessee to submit to the Port for approval any of the following: the name of the proposed contractor; final plans and specifications; a site-use plan; and architectural renderings. Approval must be obtained prior to application for any building or similar permit. The Port may condition its approval on Lessee's obtaining and delivering to the Port a performance bond and a labor and materials payment bond (issued by a corporate surety satisfactory to the Port and licensed to do business in Oregon), each in an amount equal to the estimated cost of the construction and in a form satisfactory to the Port. All improvements installed on the Premises by Lessee shall be the property of Lessee until termination of this Lease. Upon termination, however, such Improvements shall be deemed a part of the Premises, at the option of the Port, as more

specifically provided in Section 9. "Improvements" shall mean all improvements made to and affixed to the Premises by either the Port or by Lessee.

#### **4.1.2 Permits and Licenses**

No Work may commence until Lessee obtains and delivers to the Port copies of all necessary governmental permits and licenses.

#### **4.1.3 Other Requirements**

All Work shall be performed in a good and workmanlike manner and in conformance with applicable Port Rules and all permit requirements. All Work shall be done with reasonable dispatch. If requested by the Port, within thirty (30) days after the completion of any Work covered by this Section 4, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed Work, prepared by an architect or engineer licensed by the State of Oregon.

### **4.2 Maintenance**

#### **4.2.1 General**

Except for those responsibilities which are specifically designated as the responsibility of the Port in Section 5, Lessee shall keep and maintain the Premises and all Improvements, systems, (including those already on the Premises at the time of this Lease) and equipment located thereon, in good repair and operating condition and shall make all necessary and appropriate preventive maintenance, repairs, and replacements. Such maintenance includes, but is not limited to, the walls, floors, floor coverings, ceilings, lamps and lamp fixtures.

#### **4.2.2 Maintenance Standards**

Lessee shall regularly and consistently maintain the Premises at all times in a clean, orderly and safe condition. Lessee shall also comply with any specific published or posted Port maintenance standards for the Building. Lessee shall comply with all applicable manufacturer's recommended maintenance standards for all systems, and equipment located within the Premises, and, whether or not such manufacturer's standards exist, shall take appropriate preventative maintenance actions so as to maximize their useful lives.

### **4.3 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. If any lien is filed against the Premises which Lessee wishes to protest, then Lessee shall immediately deposit cash with the Port, or procure a bond acceptable to the Port, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish the cash or bond acceptable to the Port within ten (10) days shall constitute an Event of Default under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien.



#### **4.4 Utilities and Services**

The following utilities are included in Basic Rent and provided by the Port: Electrical, heat, sanitary sewer and water. Lessee must make arrangement for any other utilities and shall promptly pay such other utility charges before delinquent. Interruption of services or utilities shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises, render the Port liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Lease, including full payment of all Rent due.

#### **4.5 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

#### **4.6 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (i) Confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made on reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry except to the extent caused by the gross negligence or willful misconduct of the Port. The Port shall, at all times, retain a key with which to unlock all doors in, upon or about the Premises, and the Port shall have the right to use any and all means which the Port may deem reasonable to open such doors in an emergency in order to obtain entry into the Premises.

#### **4.7 Safety Requirements**

Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in the Building.



## **5. PORT AUTHORITY AND OBLIGATIONS**

### **5.1 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights of condemnation under Oregon law, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

### **5.2 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "AS IS" condition upon taking possession. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. Unless otherwise agreed to in writing by the Port, the Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws. Lessee shall also be solely responsible for ensuring that the Premises meets all requirements of the Americans With Disabilities Act ("ADA").

### **5.3 Port Repair Obligation**

The Port shall be responsible for the repair and maintenance of the Building exterior, roof, utilities, Common Areas, and the HVAC system. Except as stated herein, the Port shall have no other maintenance or repair responsibilities of any nature whatsoever, including maintenance or repair of existing improvements. The Port shall have no liability for failure to perform any such required maintenance and repair unless written notice of the need for such maintenance or repair for which the Port is responsible is given by Lessee and the Port fails to commence efforts to remedy the problem in a reasonable time and manner. The Port shall have no liability for interference with Lessee's use which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Rent shall not be reduced during any such repair period. Notwithstanding the foregoing, any repair of damage caused by negligence or breach of this lease by Lessee, Lessee's subtenants, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be done at Lessee's sole expense.

### **5.4 Port's Right to Relocate**

#### **5.4.1 Port's Obligation to Operate Port Properties.**

Lessee acknowledges the Port's responsibility to the public to prudently operate, maintain and develop the Port's facilities. In executing this responsibility, the Port shall have the right to undertake developments, renewals, replacements and maintenance which the Port, in its sole discretion, deems prudent or necessary. Such right shall include the right of the Port to relocate Lessee, reduce the Premises, or otherwise provide for the termination of Lessee's rights under this Lease in the event that Lessee's possession of the Premises conflicts with proposed Port developments, renewals, replacements, use of or maintenance of Terminal 2.

#### **5.4.2 Terms of Relocation**

The Port's rights to relocate Lessee, reduce the Premises' size or terminate Lessee's rights to possess the Premises absent a default by Lessee and except as otherwise provided by this Lease, shall be subject to and in accordance with the following terms and conditions:

#### **5.4.3 Notification**

**5.4.3.1** The Port shall provide at least sixty (60) days' advance written notice to Lessee prior to requiring Lessee to relocate or reduce the Premises. Lessee may terminate this Lease by notice given within thirty (30) days after the Port's notice. If the Port requires Lessee to relocate, or if Lessee requests a relocation in the event that the Port requires a reduction or termination, the parties shall attempt to agree upon a substitute facility elsewhere on property owned by the Port. Lessee acknowledges that relocation space may not be available.

**5.4.3.2** The Port and Lessee shall negotiate in good faith to fairly compensate Lessee for the direct costs of a relocation under this Section 5.

**5.4.3.3** In the event the Port determines that a suitable replacement facility or area owned by the Port cannot be found or in the event that the parties cannot reach agreement for compensation within thirty (30) days after the Port's initial notice, then in either event the Port shall have the right, upon thirty (30) days' written notice to Lessee, to terminate this Lease and take possession of the Premises and title to all of the Improvements therein.

#### **5.5 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: To adjust the boundaries of, expand or delete Common Areas and correspondingly adjust the Operating Expenses; to change Port Rules for the use of the Common Areas; to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has ingress and egress to the Premises); to construct additional buildings or other improvements in the Common Areas; to evict anyone from the Common Areas who fails to comply with any applicable laws including applicable Port Ordinances and/or Port Rules.

### **6. ENVIRONMENTAL OBLIGATIONS OF TENANT**

#### **6.1 Definitions**

For the purposes of this Lease, the following definitions shall apply:

##### **6.1.1 "Environmental Laws"**

"Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state and local statutes, regulations, rules, permit terms, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.



#### **6.1.2 "Hazardous Substances"**

"Hazardous Substances" shall be interpreted in the broadest sense to include any and all substances, emissions, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Laws. "Hazardous Substances" shall also include, but not be limited to, fuels, petroleum and petroleum derived products. However, fuels, petroleum, or petroleum derived products, so long as entirely contained within vehicles, including automobiles, aircraft, and marine vessels, shall not be defined as "Hazardous Substances" under the terms of this Lease.

#### **6.1.3 "Environmental Costs"**

"Environmental Costs" shall be interpreted in the broadest sense to include, but not be limited to costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases (as defined in Section 6.1.4); and (v) violations of any environmental provisions of this Lease. Costs and damages as used in this Section shall include but not be limited to: (a) costs of evaluation, testing, analysis, clean-up, remediation, removal, disposal, monitoring and maintenance; (b) costs of reporting to or negotiating with any government agency; (c) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; (d) lost profits; and (e) diminution of value, loss, or restriction on use of property.

#### **6.1.4 "Hazardous Substance Release"**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then current permit issued under applicable Environmental Laws.

### **6.2 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises (i) in compliance with all Environmental Laws and the Environmental provision of this Lease, (ii) in a manner designed to protect the environment and (iii) in cooperation with the Port in the Port's efforts to comply with all Environmental Laws. Lessee shall ascertain which Environmental Laws govern its activities on or relating to the Premises and shall maintain a current understanding of such Environmental Laws throughout the Lease Term. Lessee shall manage, and as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of Environmental Laws by any party on or relating to the Premises.

### **6.3 Use of Hazardous Substances**

No use, handling, storage, generation, creation, placing, disposal, or transportation of any Hazardous Substance is permitted on, about or from the Premises. In conjunction with, and in the ordinary course of, the Permitted Uses, Lessee shall be permitted to use, handle, store,



place or transport, for their intended purposes in accordance with all manufacturer's instructions, small quantities of ordinary janitorial, office and landscaping supplies available at retail.

#### **6.4 Lessee's Liability**

##### **6.4.1 Hazardous Substance Releases**

Lessee shall be liable for any Hazardous Substance Release which occurs during the Lease Term on the Premises. Lessee shall also be liable for any Hazardous Substance Release on the Premises or on other properties or in the air or in adjacent or nearby waterways (including groundwater) as a result of or in connection with Lessee's occupancy or use of the Premises which occurs during the Lease Term or which occurs or continues after the Lease Term.

##### **6.4.2 Lessee's Liability for Environmental Costs**

Lessee shall be liable for all Environmental Costs arising under this Lease. Any Environmental Cost for which Lessee is obligated under this Lease shall be paid by Lessee on or before the date such Environmental Costs are due. Any Environmental Cost incurred by, paid by or assessed against the Port, for which Lessee is responsible under this Lease, shall be paid by Lessee within thirty (30) days after the date of written notice or invoice from the Port.

#### **6.5 Notice to the Port**

Lessee shall promptly notify the Port upon becoming aware of (i) a violation or alleged violation of any Environmental Law related to the Premises or to Lessee's occupation or use of the Premises or any environmental provision of this Lease, (ii) any Hazardous Substance Release on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same, (iii) any notice or communication from a governmental agency or any other person directed to Lessee relating to any Hazardous Substance, Hazardous Substance Release or any violation or alleged violation of any Environmental Laws which relate to the Premises or to Lessee's occupation or use of the Premises, and (iv) any Hazardous Substance Release or violation of Environmental Law discovered by Lessee on property or in the air or water adjacent to the Premises.

#### **6.6 Lessee's Documentation of Environmental Management and Conduct**

Lessee shall maintain for the duration of the Lease term for periodic inspection by the Port, and deliver to the Port, at the Port's request, true and correct copies of all records required to be maintained pursuant to any Environmental Laws related to the Premises or to Lessee's occupation or use of the Premises. Such records shall include, but not be limited to, Material Safety Data Sheets ("MSDS"), for all Hazardous Substances used or stored on the Premises. MSDS information shall be kept current and in a place known to and accessible to the Port.

### **7. INDEMNITY AND INSURANCE**

#### **7.1 General Indemnity**

Upon the Commencement Date of this Lease, Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to,

attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors; (ii) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (iii) any condition created in or about the Premises by any party, other than the Port or an agent of the Port, including any accident, injury or damage occurring on or about the Premises after the Commencement Date; (iv) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; (v) any damage caused any Lessee on or to the Premises. For purposes of these Sections 7.1 (i) through (v) and 7.2 below, "Lessee" shall be deemed to include Lessee and Lessee's sublessees and licensees and all respective partners, officers, directors, agents, employees, invitees and/or contractors.

## **7.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

### **7.2.1 Certificates; Notice of Cancellation**

On or before the Commencement Date, Lessee shall provide the Port with certificates of insurance establishing the existence of all insurance policies required under this Section. Thereafter, the Port must receive notice of the expiration or renewal of any policy at least thirty (30) days prior to the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated or allowed to lapse without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the entire Lease Term and any exercised Extension Options thereof. Insurance canceled without Port consent shall be deemed an immediate Event of Default under this Lease. The Port shall also be given certified copies of Lessee's policies of insurance, upon request.

### **7.2.2 Additional Insured**

The Port shall be named as an additional insured in each required policy and, for purposes of damage to the Premises, as a loss payee. Such insurance shall not be invalidated by any act, neglect or breach of contract by Lessee.

### **7.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.



#### **7.2.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or equivalent. The Port may, upon thirty (30) days written notice to Lessee, require Lessee to change any carrier whose rating drops below an A rating.

#### **7.3 Required Insurance**

At all times during this Lease, Lessee shall provide and maintain the following types of coverage:

##### **7.3.1 General Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy (including coverage for broad form contractual liability; and any personal injury liability) for the protection of Lessee and the Port, insuring Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall name the Port as an additional insured. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence for bodily injury and property damage for all coverage specified herein.

##### **7.3.2 Fire Legal Liability Insurance**

The Port shall insure the building space and all improvements affixed thereto, considered to be part of the building, being leased by Lessee as a part of the leased Premises. Lessee is responsible to insure all of Lessee's own personal property and trade fixtures, which items shall not be covered by Port insurance. Furthermore, Lessee must at all times carry Fire Legal Liability insurance coverage in an amount of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000).

##### **7.3.3 Automobile Liability Insurance**

Lessee shall maintain an occurrence form automobile liability policy insuring Lessee and the Port against liability for damage because of bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of Lessee's owned, hired and non-owned vehicles on and around the Premises. Such insurance shall name the Port as an additional insured. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

##### **7.3.4 Business Interruption Insurance**

To ensure timely payment of Rent, and any other losses that might otherwise occur to Lessee, Lessee shall maintain a business interruption insurance policy which shall include coverage for payment of all Rent due the Port hereunder for a minimum of a twelve (12) month period. The amount of this coverage will be re-evaluated by the Port on a yearly basis. The proceeds of any Business Interruption Insurance shall be used first to continue Rent payments to the Port.



### **7.3.5 Workers' Compensation Insurance**

Lessee shall maintain in force Workers' Compensation insurance for all of Lessee's employees, including coverage for Employer's Liability, and, if applicable, Longshore and Harbor Workers' Compensation Act. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon and a policy of Excess Workers' Compensation with a limit of at least ONE MILLION DOLLARS (\$1,000,000) per accident above the self-insured retention.

### **7.4 Waiver of Subrogation**

Except as limited by this Section, the parties hereto waive any right of action that they and/or their insurance carriers might have against the other for loss or damage, to the extent that such loss or damage is covered by any all-risk property insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damages. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

### **7.5 Periodic Review**

The Port shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the Port determines that such types, limits, and/or terms should be changed, the Port will give Lessee a minimum of thirty (30) days notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

## **8. DAMAGE OR DESTRUCTION**

### **8.1 General**

In the event the Building is partially or completely destroyed, the Port shall be under no obligation to repair and reconstruct the Building, and the Port may terminate this Lease, effective as of the date of the damage or destruction.

### **8.2 Port Reconstruction**

If the Port elects to restore the Building, the Port's obligations shall be limited to the repair or reconstruction of the Building to substantially the same condition as when delivered to Lessee and shall further be limited to the extent of the insurance proceeds available to the Port for such restoration. Lessee shall be responsible for redecoration and for replacements of Lessee's own personal property; as well as replacement of any improvements made to the Premises on behalf of Lessee, such redecoration and refurbishing or re-equipping by Lessee shall be of equivalent quality to that originally installed. So long as the Port, within thirty (30) days of the damage, makes a written election to undertake the restoration of the Building, Lessee shall not be entitled to terminate this Lease, and no damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises or of the Building.

### **8.3 Lessee's Property**

The Port shall not be required to do any such repair or restoration work except during business hours of business days but will proceed to restore the Building with reasonable diligence. The Port shall not be obligated to insure or protect against loss by fire or other casualty to the contents of the Premises, and shall not be obligated to repair any damage to or replace any Improvements paid for by Lessee or any of Lessee's equipment, inventory or personal property. Lessee is responsible for maintaining insurance coverage for all personal property located in the Premises, including Lessee's trade fixtures.

## **9. SECTION 9 TERMINATION**

### **9.1 Duties on Termination**

Upon expiration or earlier termination of the Lease for any reason, Lessee shall deliver all keys to the Port and surrender the Premises and all Improvements in good clean condition. All Improvements constructed by Lessee or the Port shall, at the Port's option, become Port property and shall not be removed unless the Port directs Lessee to remove such Improvements, in which case Lessee must remove such Improvements and repair any damage to the Premises. All repair for which Lessee is responsible shall be completed prior to termination and surrender.

### **9.2 Lessee's Personal Property**

#### **9.2.1 Removal Requirement**

Furniture, decorations, detached floor covering, curtains, blinds, furnishings and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee. At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove from the Premises any and all of Lessee's removable personal property and shall repair any damage to the Premises resulting from the installation or removal of such property. Title to any items of Lessee's trade fixtures and other property which remain on the Premises after the termination date of this Lease may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (i) Retaining any or all of such trade fixtures and other property without any requirement to account to Lessee therefor; or (ii) removing and disposing of any or all of such trade fixtures and other property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

#### **9.2.2 Time for Removal**

The time for removal of any property which Lessee is required to remove from the Premises upon termination shall be as follows: (i) On or before the Expiration Date; or (ii) within thirty (30) days after notice from the Port requiring such removal where the property to be removed is an Improvement which Lessee is not required to remove except after election or notice by the Port; or (iii) if this Lease is terminated unexpectedly due to a casualty loss, relocation, condemnation, an uncured Event of Default or for any other reason prior to the Expiration Date, then all removal must occur within thirty (30) days of the actual termination date and Lessee must continue to pay all Rent during that period until removal is completed.



### **9.3 Holding Over**

If Lessee holds over after this Lease terminates, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance, at the Port's sole discretion. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by this Lease, except that the tenancy shall be from month-to-month, subject to the payment of all Rent in advance, and subject to adjustments per Section 3.2. Such a tenancy may be terminated at any time by written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to evict Lessee but the Port may still collect a charge for use of the Premises at the rate stated above.

## **10. DEFAULT**

### **10.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default:

#### **10.1.1 Default in Rent.**

Failure of Lessee to pay any Rent or other amount payable to the Port or to others as provided herein within ten (10) days of the Due Date. No notice by the Port that Rent or such other amount is past due shall be required.

#### **10.1.2 Default in Other Covenants**

Failure of Lessee to comply with any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) within ten (10) days after written notice by the Port describing the nature of the default. If the default is of such a nature that it cannot be completely remedied within the ten (10) day period, this provision shall be complied with if Lessee begins correction of the default within the ten (10) day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the Port. Notwithstanding the foregoing, the Port need not give notice for a similar type of default more than twice during the Lease Term, and a failure to comply with any term, covenant or condition after the second such notice shall constitute an Event of Default for which no further notice or opportunity to cure need be given.

#### **10.1.3 Insolvency**

To the extent permitted by the United States Bankruptcy Code, the following shall each constitute an event of default hereunder: insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within ten (10) days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; and the attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days. In these instances, no notice that an Event of Default has occurred shall be required from the Port.



#### **10.1.4 Abandonment**

Failure of Lessee for thirty (30) days or more to use and occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease. No notice that an Event of Default has occurred shall be required from the Port.

#### **10.1.5 Failure to Abide by Laws**

Failure of Lessee to comply with any applicable laws or any of the Port's Rules. If the default is not of a serious nature, which determination shall be in the sole discretion of the Port, and the default can be cured as outlined in Section 10.1.2 above, then the Port shall give Lessee ten (10) days notice of such default and Lessee shall be permitted to cure. If the violation is of a serious nature, to be determined in the sole discretion of the Port, then termination will be immediate and no opportunity to cure the default will be allowed.

#### **10.2 No Notice Required**

Notwithstanding Section 10.1.2, if any Event of Default is of such a nature that it threatens to cause serious harm to the Port or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief. The determination of whether such Event of Default is serious enough to merit such lack of notice shall be within the sole discretion of the Port.

#### **10.3 Remedies on Default**

Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, the Port may exercise any or all of the following remedies, in addition to any other rights and remedies provided in this Lease or at law or equity:

##### **10.3.1 Re-entry**

The Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

##### **10.3.2 Reletting**

The Port, at its option, may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Lease, at such rentals and upon such conditions (including concessions and free rent periods) as the Port, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Premises, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make such physical changes to the Premises as the Port, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. If there is other unleased space in the Building or in other Port owned buildings, the Port shall have no obligation to attempt to relet the Premises prior to



leasing such other space. In no event shall the Port be required to attempt to relet the Premises to a potential lessee with whom the Port has been negotiating a lease for other space owned by the Port or to whom the Port has shown other space owned by the Port. The Port shall be entitled to use its best efforts to lease such other Port space to such prospective tenant.

#### **10.3.3 Rent Recovery**

Whether or not the Port retakes possession or relets the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the default. Damages shall include, without limitation: all Rents due under this Lease; all legal expenses and other related costs incurred by the Port as a result of Lessee's default; that portion of any leasing commission paid by the Port as a result of this Lease which is attributable to the unexpired portion of this Lease; all costs incurred by the Port in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting; and all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the default.

#### **10.3.4 Recovery of Damages**

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rents reserved in this Lease (including an estimated amount of Operating Expenses as determined by the Port) for the balance of the Lease Term after the time of award, and the fair rental value of the Premises for the same period. If the Port has relet all or any part of the Premises for the period which otherwise would have constituted all or any part of the unexpired portion of the Lease Term, or any part, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair rental value for the part or the whole of the Premises so relet during the term of the reletting.

#### **10.4 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **10.5 Termination**

Even though Lessee has breached this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for default and may be included in a notice of failure of compliance. No such termination



shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

#### **10.7 Curing Lessee's Defaults**

If Lessee shall default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such default continues after the expiration of ten (10) days from the date the Port gives Lessee notice of the default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as additional Rent, any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee.

#### **10.8 Default by Port**

If Lessee believes the Port to be in Default of this Lease, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have thirty (30) days within which to cure any such default, or if such default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Building and not thereafter, subject to Section 11.3.

### **11. ASSIGNMENT, SUBLEASE AND TRANSFER**

#### **11.1 Prohibition**

This Lease is personal to Lessee. Unless otherwise provided in this Lease, no part of the Premises, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means, without the prior written consent of the Port. Whether to deny or grant any such request shall be in the Port's sole discretion. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law. If Lessee is a corporation or other entity, any change in ownership of the controlling interest in the stock of the corporation or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed an assignment of this Lease requiring the Port's consent.

#### **11.2 Effect of Consent**

No assignment or subletting by Lessee shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder. Any attempted assignment or sublease by Lessee in violation of the terms and covenants of this Lease shall be void. Any consent by the Port to a particular assignment or sublease shall not constitute the Port's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the



signed assignment or sublease document to the Port promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that the Port have the right to enforce such terms and conditions directly against such assignee or subtenant.

### **11.3 Transfer by the Port**

At any time after the Commencement Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, the Lessee shall attorn to said transferee and recognize transferee as the new Lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations of the Port under this Lease.

### **11.4 Estoppel Certificates**

Lessee agrees to execute and deliver to the Port, at any time and within ten (10) days after written request, a statement certifying: (i) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (ii) the dates to which Rent has been paid; (iii) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (iv) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten days after the Port's written request therefor, Lessee shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement.

## **12. GENERAL PROVISIONS**

### **12.1 Covenants, Conditions, and Restrictions**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon the Building and underlying land and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port. This Lease is also subject to and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises herein. Lessee agrees that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said land and the Port's interest in the leasehold, and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith.

## **12.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon. Unless Lessee and the Port agree otherwise, venue shall be in Multnomah County, Oregon.

## **12.3 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

## **12.4 Port Consent**

If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and the Port has, in fact, acted unreasonably in either of those instances.

## **12.5 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

## **12.6 Notices**

All notices required or desired to be given under this Lease shall be in writing and may be delivered by hand delivery or by placement in the U.S. mail, postage prepaid, as certified mail, return receipt requested, addressed to the Port at:

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208-3529  
Attn: Marine Contracts Administrator

with a copy to:

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208-3529  
Attn: Legal Department



and to Lessee at:

Lisa DeSart  
Gulf & Atlantic Maritime Services, Inc.  
555 E. Ocean Blvd., Suite 820  
Long Beach, CA 90802

Any notice delivered by hand delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth herein shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

#### **12.7 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

#### **12.8 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision.

#### **12.9 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

#### **12.10 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **12.11 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

#### **12.12 Lease Subject to Nondiscrimination**

Lessee assures that Lessee will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E (as it may be amended, renamed, revised or expanded from time to time), to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that Lessee's covered sub-organizations provide assurances to Lessee



that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations to the same effect.

#### **12.13 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party including other tenants. The Port shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. The Port shall not be liable for the consequence of admitting by passkey or refusing to admit to the Premises, Lessee or any of Lessee's agents or employees or other persons claiming the right of admittance.

#### **12.14 Headings**

The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

#### **12.15 Exhibits Incorporated by Reference**

All Exhibits attached to this Lease are incorporated by reference herein for all purposes.

#### **12.16 Modification**

This Lease may not be modified except by a writing signed by the parties hereto.

#### **12.17 Brokers**

Lessee represents that Lessee has not dealt with any leasing agent or broker in connection with this Lease and agrees to indemnify and hold the Port harmless from and against any and all damages, costs, and expenses arising in connection with any claim of an agent or broker alleging to have been retained by Lessee in connection with this Lease.

#### **12.18 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

#### **12.19 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises. The Port shall not be liable by reason of any claimed breach of any representations or promises not expressly stated in this Lease. Any oral agreement with or representations by the Port are expressly waived by Lessee.

#### 12.20 Successors

The rights, liabilities and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

#### 12.21 Joint and Several Obligations

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

#### 12.22 Execution of Multiple Counterparts

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

#### 12.23 Defined Terms

Capitalized Terms shall have the meanings given them in the text of this Lease. (See Table of Contents for a listing of all defined terms.)

#### 12.24 No Limit on Port's Powers

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

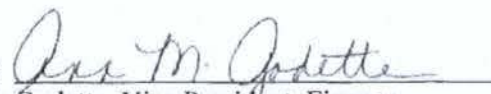
IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first above.

LESSEE

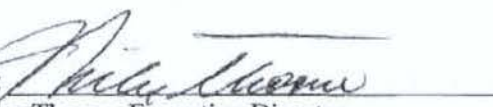
LESSOR

GULF & ATLANTIC MARITIME SERVICES, INC. THE PORT OF PORTLAND

By:

  
Ann Godette, Vice President, Finance

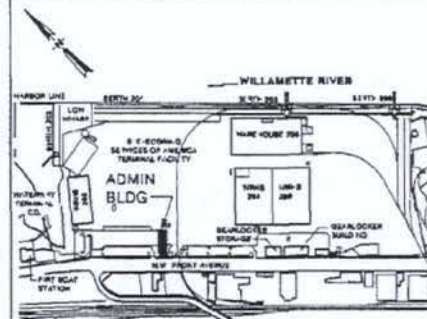
By:

  
Mike Thorne, Executive Director

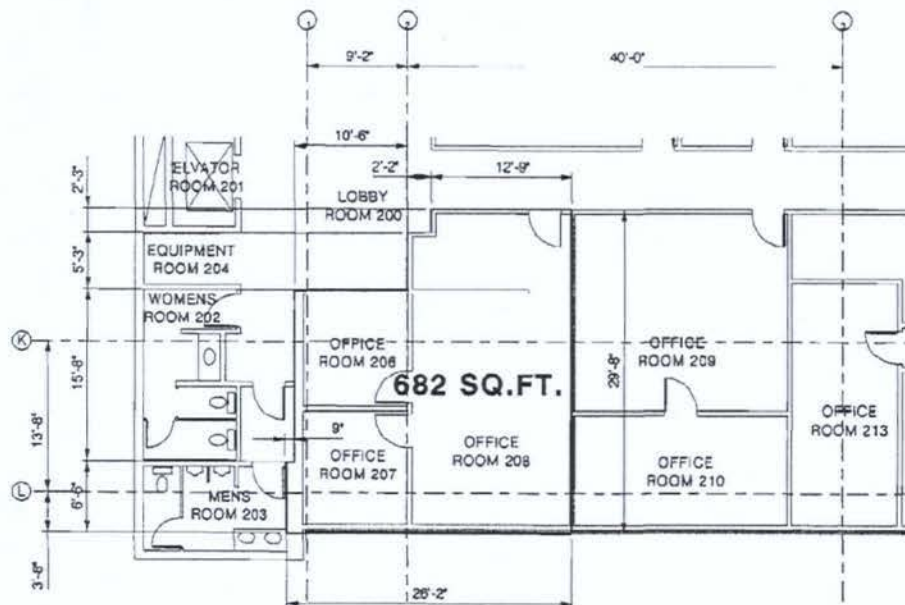
APPROVED AS TO LEGAL SUFFICIENCY

By:

  
Counsel for Port of Portland




2  
LP



SECOND FLOOR  
ADMINISTRATION BLDG  
SCALE: 1/16" = 1'-0"

1  
LP

## Exhibit A

|                                   |  |  |  |  |   |   |                            |   |  |                   |                                     |
|-----------------------------------|--|--|--|--|---|---|----------------------------|---|--|-------------------|-------------------------------------|
|                                   |  |  |  |  |  | <b>PORT OF PORTLAND</b><br>PORTLAND, OREGON |                            | DESIGNED BY <u>F. MALLOY</u>            |  | TERMINAL 2        |                                     |
|                                   |  |  |  |  |   |   |                            | DRAWN BY <u>G. ROSE</u>                 |  | <b>LEASE PLAT</b> |                                     |
|                                   |  |  |  |  |   | CHECKED BY <u>F. MALLOY</u>                 |                            | GULF & ATLANTIC MARITIME SERVICES, INC. |  |                   |                                     |
|                                   |  |  |  |  | PROP. & DEVELOP. SERV. MGR.   |   | DATE <u>APR 1997</u>       |   | SUBMITTED BY <u>MALLOY, CAD/CORR/MTD</u> |                   | DRAWING NO. <u>T2 97-1 1/1 (LP)</u> |
| NO. DATE BY REVISIONS CK'D APP'VD |  |  |  |  | 51457<br>PROJECT NUMBER   |   | SCALE <u>1/18" = 1'-0"</u> |   |  |                   |                                     |

POPT2100528



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# OFFICE LEASE

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*BETWEEN*

THE PORT OF PORTLAND

(the Lessor)

*AND*

YOKOTA INTERNATIONAL, INC.

(the "Lessee")

Dated as of: 6-30-1999

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**OFFICE LEASE  
YOKOTA INTERNATIONAL, INC.  
T-2 ADMINISTRATION BUILDING**

This **LEASE** (this "Lease"), effective June 30, 1999 ("Effective Date") is between **THE PORT OF PORTLAND**, a Port district of the State of Oregon (the "Port") and **YOKOTA INTERNATIONAL, INC.**, ("Lessee") a company wholly owned by Stevedoring Services of America (SSA) and organized to business in the state of California.

**RECITALS**

A. SSA's Portland corporate office is located in the Terminal 2 Administration Building (Port Agreement No. 93-006)

B. SSA has recently purchased the assets of Lessee and desires they move their office to the Terminal 2 Administration Building to be closer to SSA.

Therefore, the parties intending to be legally bound by the terms of this Lease, agree as follows:

**1. AGREEMENT TO LEASE**

**1.1 Agreement to Lease and Description of Property**

The Port leases to Lessee and Lessee leases from the Port two offices located on the third floor of the T-2 Administration Building (the "Building") at 3556 NW Front Avenue consisting of approximately 453 square feet of space, as shown on Lease Plat No. T2 1999-1, attached to this Lease as **Exhibit A** (the "Premises").

**1.2 Use of Premises**

**1.2.1 Permitted Use**

Lessee may use the Premises only for general office use. No other use may be made of the Premises without the prior written consent of the Port.

**1.2.2 Limits on Use**

**1.2.2.1** Lessee shall not, without the prior written consent of the Port, use any device which would violate any local noise ordinance or cause substantial noise, vibration, fumes or electronic interference on the Premises.

**1.2.2.2** No satellite or electronic transmitting devices (other than telephone, telex or telefax machines) shall be installed, maintained or operated on the Premises except with the written approval of the Port.

**1.2.2.3** Lessee shall not overload the electrical circuits from which Lessee obtains current. Electrical service furnished will be 110 volts unless different service already exists in the Premises. Lessee shall provide Lessee's own surge protection for power furnished to computers and any other electronic devices/equipment approved for use by the Port.



If Lessee wishes to use equipment other than standard office equipment, Lessee must obtain the Port's written permission to operate it during specified hours.

**1.2.2.4** Lessee shall not use or permit anyone else to use the Premises, nor shall Lessee permit anything to be done on the Premises, which: (a) adversely affects or is likely to adversely affect the Premises; (b) creates any condition that may be a safety hazard; (c) creates or tends to create a nuisance; or (d) interferes in any way with Terminal 2 operations.

### **1.3 Appurtenant Rights**

Lessee, Lessee's customers, employees, and invitees shall have the nonexclusive right to use the Building's Common Areas in common with the Port and with others to whom the Port has granted or may grant such right. The term "Common Areas" generally means existing building hallways, lobby areas, bathrooms, sidewalks, the parking area and any other areas designated as Common Areas by the Port. Except as set forth in this Section, no other appurtenant rights are granted as part of this Lease.

## **2. TERM**

The term of this Lease ("Term") shall commence on June 30, 1999, (the "Commencement Date") and expire February 7, 2001, (the "Expiration Date") unless sooner terminated pursuant to the terms of this Lease.

## **3. RENT**

### **3.1 Basic Rent, Operating Expenses, and Rent**

Lessee shall pay to the Port a monthly rent, comprised of Basic Rent and Operating Expenses, set forth in Section 3.2 and 3.4 below, for the Premises. "Rent," as used herein, shall mean Basic Rent and Operating Expenses together.

### **3.2 Operating Expenses**

Lessee shall pay a per square foot rate to cover Operating Expenses for the Premises. "Operating Expenses" are costs of operating, repairing, servicing and maintaining the Building and Common Areas, and include real property taxes; all water and sewer charges; the cost of heating and electricity provided to the Building (including the Premises); janitorial and cleaning supplies and services; costs of maintenance and landscaping services for the exterior Common Areas; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses and permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; and the annual amortized capital improvement costs (amortized over a period of time and at an interest rate selected by the Port).

Operating Expenses shall be calculated in accordance with the Port's standard real estate accounting practices. The Port may include in Operating Expenses any costs attributable to support services provided by the Port to administer the Port's obligations relating to the Building and Common Areas, and costs incurred by the Port in connection with the accounting and billing of Operating Expenses. Effective as of July 1 of each year, beginning July 1, 2000, the Port shall

announce the revised per-square-foot costs of the estimated Operating Expenses for the upcoming Fiscal Year (currently July 1 through June 30) and Lessee's monthly rent payment shall then be adjusted to reflect the new Operating Expense amount. If Lessee makes payments before the new rate is announced, Lessee will be invoiced the difference and will pay that difference per the invoice terms.

### 3.3 Prepayment of Rent

Rent for the first month shall be paid upon execution of this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month, or if Lessee occupies the premises prior to the Commencement Date, Rent for that partial calendar month shall be prorated based on the number of days remaining in the month.

### 3.4 Adjustments to Rent

As shown on the following table, Basic Rent shall be increased by \$2.00 per square foot effective January 1, 2000, and shall remain in effect through February 7, 2001; Operating Expenses shall be adjusted annually beginning July 1, 2000, according to the procedure described in Section 3.2

| Rent                  | Square Feet | Rate per Square Foot |                  |                  |
|-----------------------|-------------|----------------------|------------------|------------------|
|                       |             | 7/1/99 - 12/31/99    | 1/1/00 - 6/30/00 | 7/1/00 - 2/7/01  |
| Basic Rent            | 453         | \$7.32               | \$9.32           | \$9.32           |
| Operating Expenses    | 453         | \$6.18               | \$6.18           | Adj. eff. 7/1/00 |
| Total per Square Foot | 453         | \$13.50              | \$15.50          | Adj. eff. 7/1/00 |
| Monthly Equivalent    |             | \$509.63             | \$585.13         | Adj. eff. 7/1/00 |
| Annual Equivalent     |             | \$6,115.50           | \$7,021.50       | Adj. eff. 7/1/00 |

### 3.5 Rent Payments

Lessee shall make a combined payment of Basic Rent and Operating Expenses, in advance, on or before the first day of each calendar month ("Due Date")

#### 3.5.1 No Offset

Payment of Rent and other amounts due under this Lease shall be made without offset, abatement or deduction, to the Port at the following address or such other place as the Port may designate:



The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, Oregon 97208-4900

### **3.5.2 Delinquency Charge**

All Rent not paid when due shall bear a Delinquency Charge of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, whichever is less (the "Delinquency Charge"). Such interest shall be charged from the date due until the Rent and the Delinquency Charge are both paid in full. This Delinquency Charge is subject to periodic change, at the Port's sole discretion. No change shall occur, however, without at least thirty (30) days prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to timely pay Rent.

### **3.6 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default (as hereinafter defined) nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in default and obligated to pay all Rent due even if the Port has accepted a partial or late payment of Rent.

### **3.7 Security Deposit**

In addition to payments of Basic Rent, Lessee shall deposit with the Port, upon or prior to execution of this Lease, cash in the amount equal to one month's total rent as a security deposit (the "Deposit"). The Deposit shall not earn interest, shall not be considered to be held in trust for Lessee and shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by Lessee, and may be commingled with other funds of the Port. The Port may, but shall not be obligated to, apply all or any part of the Deposit to Rent or other amount not paid by Lessee when due or any amount which the Port may expend or incur by reason of Lessee's failure to perform any obligation under this Lease. If the Port applies all or any part of the Deposit, Lessee shall, upon demand, immediately replenish the Deposit to its full amount. If Lessee fully performs all of Lessee's obligations under this Lease, the Deposit, or any balance remaining, shall be returned to Lessee within thirty (30) days after the expiration of this Lease and delivery to the Port of possession of the Premises as required by this Lease. In the event of any sale of the Port's interest in the Premises, the Port may transfer the Deposit to the purchaser and the Port shall have no further liability to refund the Deposit.

### **3.8 Real Property Tax**

"Real Property Taxes" means all taxes and assessments of any public authority against the Building and the real property on which it is located, including rent taxes, gross receipt taxes, business license taxes and fees for permits for the Building, and any other tax or charge levied wholly or partly in lieu thereof, and the cost of contesting the same. Lessee shall pay monthly,



on the first day of every month, together with Basic Rent and as a part of Lessee's share of Operating Expenses, lessee's proportionate share of Real Property Taxes. If any portion of the Building is occupied by a tax-exempt tenant so that the Building has a partial tax exemption under Oregon law, then, in computing Real Property Taxes (or any increase thereof), Real Property Taxes shall be calculated taking that exemption into account. If a separate assessment or identifiable tax increase arises because of Lessee's improvements to Lessee's Premises, then Lessee shall pay one hundred percent (100%) of such assessment or increase attributable to those improvements made by Lessee. Notwithstanding that Real Property Taxes will be paid to the Port on a monthly basis as part of the Operating Expense charge, because Real Property Taxes are assessed by the County on an annual basis, Lessee shall be responsible for Lessee's Proportionate Share of the taxes for the entire tax year (currently July 1 - June 30) even if Lessee's Lease terminates prior to the expiration of the tax year. However, if the Premises is leased to another tenant for the balance of any tax year, then those taxes paid by the new tenant will be used to offset those taxes paid by Lessee.

### **3.9 Other Taxes**

Lessee shall pay when due, all taxes and fees assessed against and levied against Lessee's fixtures, equipment, furnishings and personal property located in or on the Premises or elsewhere in the Building or Common Areas. Lessee shall cause Lessee's trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of the Port. If any of Lessee's personal property is assessed with the Port's real property, Lessee shall pay to the Port the taxes attributable to Lessee's own property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

## **4. LESSEE'S OTHER OBLIGATIONS**

### **4.1 Construction of Improvements**

#### **4.1.1 Port Approval**

Lessee shall undertake no construction, alteration, or changes ("Work") on or to the Premises without the prior written consent of the Port. The Port may require Lessee to submit to the Port for approval any of the following: the name of the proposed contractor; final plans and specifications; a site-use plan; and architectural renderings. Approval must be obtained prior to application for any building or similar permit. The Port may condition its approval on Lessee's obtaining and delivering to the Port a performance bond and a labor and materials payment bond (issued by a corporate surety satisfactory to the Port and licensed to do business in Oregon), each in an amount equal to the estimated cost of the construction and in a form satisfactory to the Port. All improvements installed on the Premises by Lessee shall be the property of Lessee until termination of this Lease. Upon termination, however, such Improvements shall be deemed a part of the Premises, at the option of the Port, as more specifically provided in Section 9. "Improvements" shall mean all improvements made to and affixed to the Premises by either the Port or by Lessee.

#### **4.1.2 Permits and Licenses**

No Work may commence until Lessee obtains and delivers to the Port copies of all necessary governmental permits and licenses.

#### **4.1.3 Other Requirements**

All Work shall be performed in a good and workmanlike manner and in conformance with applicable Port Rules and all permit requirements. All Work shall be done with reasonable dispatch. If requested by the Port, within thirty (30) days after the completion of any Work covered by this Section 4, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed Work, prepared by an architect or engineer licensed by the State of Oregon.

### **4.2 Maintenance**

#### **4.2.1 General**

Except for those responsibilities which are specifically designated as the responsibility of the Port in Section 5, Lessee shall keep and maintain the Premises and all Improvements, systems, (including those already on the Premises at the time of this Lease) and equipment located thereon, in good repair and operating condition and shall make all necessary and appropriate preventive maintenance, repairs, and replacements. Such maintenance includes, but is not limited to, the walls, floors, floor coverings, ceilings, lamps and lamp fixtures.

#### **4.2.2 Maintenance Standards**

Lessee shall regularly and consistently maintain the Premises at all times in a clean, orderly and safe condition. Lessee shall also comply with any specific published or posted Port maintenance standards for the Building. Lessee shall comply with all applicable manufacturer's recommended maintenance standards for all systems, and equipment located within the Premises, and, whether or not such manufacturer's standards exist, shall take appropriate preventative maintenance actions so as to maximize their useful lives.

### **4.3 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises. If any lien is filed against the Premises which Lessee wishes to protest, then Lessee shall immediately deposit cash with the Port, or procure a bond acceptable to the Port, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish the cash or bond acceptable to the Port within ten (10) days shall constitute an Event of Default under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Lessee shall not encumber the Premises or any Improvements thereon without prior written approval of the Port.



#### **4.4 Utilities and Services**

The following utilities are included in Operating Expenses and provided by the Port: Electrical, heat, sanitary sewer and water. Lessee must make arrangement for any other utilities and shall promptly pay such other utility charges before delinquent. Interruption of services or utilities shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises, render the Port liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Lease, including full payment of all Rent due.

#### **4.5 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

#### **4.6 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (i) Confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made on reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry except to the extent caused by the gross negligence or willful misconduct of the Port. The Port shall, at all times, retain a key with which to unlock all doors in, upon or about the Premises, and the Port shall have the right to use any and all means which the Port may deem reasonable to open such doors in an emergency in order to obtain entry into the Premises.

#### **4.7 Safety Requirements**

Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in the Building.



## **5. PORT AUTHORITY AND OBLIGATIONS**

### **5.1 Delivery of Property**

Lessee shall have the right to possession of the Premises as of the Commencement Date. In the event the Port shall permit Lessee to occupy the Premises prior to the Commencement Date, such occupancy shall be subject to all provisions of this Lease and Rent will be prorated for that period. Early or delayed possession shall not advance the Expiration Date of this Lease. Should the Port be unable to deliver possession of the Premises on the scheduled Commencement Date, the Commencement Date shall be deferred until possession is so tendered, and Lessee shall owe no Rent until notice from the Port tendering possession to Lessee. The Port shall have no liability to Lessee for any delay in delivering possession.

### **5.2 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights of condemnation under Oregon law, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

### **5.3 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "AS IS" condition upon taking possession. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. Unless otherwise agreed to in writing by the Port, the Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws. Lessee shall also be solely responsible for ensuring that the Premises meets all requirements of the Americans With Disabilities Act (ADA).

### **5.4 Port Repair Obligation**

The Port shall be responsible for the repair and maintenance of the Building exterior, roof, utilities, Common Areas, and the HVAC system. Except as stated herein, the Port shall have no other maintenance or repair responsibilities of any nature whatsoever, including maintenance or repair of existing improvements. The Port shall have no liability for failure to perform any such required maintenance and repair unless written notice of the need for such maintenance or repair for which the Port is responsible is given by Lessee and the Port fails to commence efforts to remedy the problem in a reasonable time and manner. The Port shall have no liability for interference with Lessee's use which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Rent shall not be reduced during any such repair period. Notwithstanding the foregoing, any repair of damage caused by negligence or breach of this lease by Lessee, Lessee's subtenants, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be done at Lessee's sole expense.

## **5.5 Port's Right to Relocate**

### **5.5.1 Port's Obligation to Operate Port Properties**

Lessee acknowledges the Port's responsibility to the public to prudently operate, maintain and develop the Port's facilities. In executing this responsibility, the Port shall have the right to undertake developments, renewals, replacements and maintenance which the Port, in its sole discretion, deems prudent or necessary. Such right shall include the right of the Port to relocate Lessee, reduce the Premises, or otherwise provide for the termination of Lessee's rights under this Lease in the event that Lessee's possession of the Premises conflicts with proposed Port developments, renewals, replacements, use of or maintenance of Terminal 2.

### **5.5.2 Terms of Relocation**

The Port's rights to relocate Lessee, reduce the Premises' size or terminate Lessee's rights to possess the Premises absent a default by Lessee and except as otherwise provided by this Lease, shall be subject to and in accordance with the following terms and conditions:

### **5.5.3 Notification**

**5.5.3.1** The Port shall provide at least sixty (60) days' advance written notice to Lessee prior to requiring Lessee to relocate or reduce the Premises. Lessee may terminate this Lease by notice given within thirty (30) days after the Port's notice. If the Port requires Lessee to relocate, or if Lessee requests a relocation in the event that the Port requires a reduction or termination, the parties shall attempt to agree upon a substitute facility elsewhere on property owned by the Port. Lessee acknowledges that relocation space may not be available.

**5.5.3.2** The Port and Lessee shall negotiate in good faith to fairly compensate Lessee for the direct costs of a relocation under this Section 5.5.

**5.5.3.3** In the event the Port determines that a suitable replacement facility or area owned by the Port cannot be found or in the event that the parties cannot reach agreement for compensation within thirty (30) days after the Port's initial notice, then in either event the Port shall have the right, upon thirty (30) days' written notice to Lessee, to terminate this Lease and take possession of the Premises and title to all of the Improvements therein.

## **5.6 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: To adjust the boundaries of, expand or delete Common Areas and correspondingly adjust the Operating Expenses; to change Port Rules for the use of the Common Areas; to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has ingress and egress to the Premises); to construct additional buildings or other improvements in the Common Areas; to evict anyone from the Common Areas who fails to comply with any applicable laws including applicable Port Ordinances and/or Port Rules.



## **6. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **6.1 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises in compliance with all applicable laws and regulations and the environmental provisions of this Lease.

### **6.2 Use of Hazardous Substances**

Lessee shall be permitted to only use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of small quantities of ordinary janitorial, office and landscaping supplies available at retail. Lessee must obtain the Port's prior written approval to bring any other hazardous substances onto the Premises.

### **6.3 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises concerning environmental compliance.

### **6.4 Environmental Response and Notice**

In the event of an environmental incident of any kind, Lessee shall be responsible for all necessary response and shall promptly notify the Port of the incident and the response. If notice must be given on the weekend or after 5:00 p.m. on any day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number currently is (503) 240-2230.

### **6.5 Lessee's Records**

Lessee shall maintain for the duration of the Lease Term, Material Safety Data Sheets (MSDS) for all Hazardous Substances used or stored on the Premises in a place known to and accessible to the Port.

## **7. INDEMNITY, INSURANCE**

### **7.1 General Indemnity**

Lessee agrees to defend (using legal counsel reasonably acceptable to the Port), indemnify, and hold harmless the Port from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's negligence or willful misconduct: (a) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by any party, other than the Port or an agent of the Port, including any accident, injury or damage occurring on or about the Premises after the Effective Date or earlier



if caused by Lessee; (d) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; (e) any damage caused by Lessee on or to the Premises. For purposes of this Section 7.1 and Section 7.2 below, Lessee shall be deemed to include Lessee and Lessee's sublessees and licensees and all respective partners, officers, directors, agents, employees, invitees and/or contractors.

## **7.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

### **7.2.1 Certificates; Notice of Cancellation**

On or before the Effective Date and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance establishing the existence of all insurance policies required under this Section. No insurance policy may be canceled, materially revised, or non-renewed without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the Lease Term. Insurance allowed to lapse without Port consent shall be deemed an immediate Event of Default under this Lease. The Port shall also be given certified copies of Lessee's policies of insurance, upon request.

### **7.2.2 Additional Insured**

The Port shall be named as an additional insured in each required liability policy and, for purposes of damage to the Premises, as a loss payee.

### **7.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

### **7.2.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or equivalent. The Port may, upon thirty (30) days written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A" rating.

## **7.3 Required Insurance**

At all times during the Lease Term, Lessee shall provide and maintain the following types of coverage:

### **7.3.1 Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy for the protection of Lessee and the Port, insuring Lessee against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and

occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall name the Port as an additional insured. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage for all coverage specified herein.

### **7.3.2 Automobile Liability Insurance**

Lessee shall maintain an occurrence form automobile liability policy insuring Lessee and the Port against liability for damage because of bodily injury, death, or damage to property, including loss of use thereof, and occurring in any way related to the use, loading or unloading of Lessee's owned, hired and non-owned vehicles on and around the Premises. Such insurance shall name the Port as an additional insured. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence.

### **7.3.3 Workers' Compensation Insurance**

Lessee shall maintain in force Workers' Compensation insurance for all of Lessee's employees, including but not limited to coverage for employees under the Longshoremen and Harbor Worker's Compensation Act and coverage for Employer's Liability.

### **7.4 Waiver of Subrogation**

Except as limited by this Section, the parties hereto waive any right of action that they and/or their insurance carriers might have against the other for loss or damage, to the extent that such loss or damage is covered by any All-Risk property insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damages. This waiver of subrogation shall not extend to any applicable deductibles under such policy or policies.

### **7.5 Periodic Review**

The Port shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the Port reasonably determines that such types, limits, and/or terms should be changed, the Port will give Lessee a minimum of thirty (30) days notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

### **7.6 Survival of Indemnities**

The indemnity agreements set forth in Sections 7.1 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

## **8. DAMAGE OR DESTRUCTION**

### **8.1 General.**

In the event the Building or any other Improvements are partially or completely destroyed, the Port shall be under no obligation to repair and reconstruct the Building and/or such other Improvements, and the Port may terminate this Lease.



## **8.2 Port Reconstruction.**

If the Port elects to restore the Building and/or such other Improvements, the Port's obligations shall be limited to the repair or reconstruction of the Building and/or such other Improvements to substantially the same condition as when delivered to Lessee and shall further be limited to the extent of the insurance proceeds available to the Port for such restoration. Lessee shall be responsible for replacement of Lessee's own Improvements, furniture, equipment, and supplies. No damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises or of the Building. The Port shall not be required to do any such repair or restoration work except during business hours of business days but will proceed to restore the Building with reasonable diligence. The Port shall not be obligated to insure or protect against loss by fire or other casualty to the contents of the Premises, and shall not be obligated to repair any damage to or replace any Improvements paid for by Lessee or any of Lessee's equipment, inventory or personal property. Lessee is responsible for maintaining insurance coverage for all personal property located in the Premises, including Lessee's trade fixtures.

## **8.3 Rent Reduction.**

Rent payments payable under this Lease shall be proportionately paid up to the time of such damage or destruction and shall then abate proportionately to the area of the Premises rendered unusable until such time as the Premises may be fully restored. However, if the Premises are damaged, destroyed or rendered untenable as a result of the negligent act or omission of Lessee, Rent shall not abate and the Port may, in its discretion, require Lessee to repair and reconstruct such Premises and pay the costs of repair in excess of insurance proceeds recovered therefor; or, if Lessee fails or refuses to complete such reconstruction, the Port may itself choose to repair and reconstruct such Premises and Lessee shall be responsible for reimbursing the Port for the costs and expenses incurred in such repair in excess of insurance proceeds recovered therefor.

## **9. TERMINATION**

### **9.1 Termination by Either Party**

The Port shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

### **9.2 Duties on Termination.**

Upon termination of the Lease for any reason, Lessee shall deliver all keys to the Port and surrender the Premises and all Improvements in good clean condition. All Improvements on the Premises, whether constructed by the Port or by Lessee, shall, at the Port's option, become Port property and shall not be removed unless the Port directs Lessee to remove such Improvements, in which case Lessee must promptly remove the Improvements and then repair any damage to the Premises. All repair for which Lessee is responsible shall be completed prior to termination and surrender.



### **9.3 Lessee's Personal Property**

#### **9.3.1 Removal Requirement**

Furniture, decorations, detached floor covering, curtains, blinds, furnishings and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee at Lessee's expense, and shall remain the property of Lessee upon termination of this Lease if Lessee is not in default at the time of termination of the Lease, and if they are removed from the Premises no later than fourteen days after termination. Lessee shall remove its trade fixtures, signs, and personal property in a manner and at times that do not interrupt operation of the Port facilities. Lessee shall repair all damage done to the Premises or other Port-owned property resulting from the removal of such trade fixtures, signs, and personal property and shall restore the Premises and other Port-owned property to the state of good repair that existed prior to the installation of Lessee's trade fixtures, signs, and personal property, less normal wear and tear. Title to any items of Lessee's trade fixtures and other personal property which remain on the Premises beyond the time allowed in this Section may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (a) retaining any or all of such trade fixtures and other personal property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such trade fixtures and other personal property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

#### **9.3.2 Time for Removal**

The time for removal of any property which Lessee is required to remove from the Premises upon termination shall be as follows: (a) within thirty (30) days after notice from the Port requiring such removal where the property to be removed is an Improvement which Lessee is not required to remove except after election or notice by the Port; or (b) if this Lease is terminated unexpectedly due to a casualty loss, condemnation, an uncured Event of Default or for any other reason prior to the Expiration Date, then all removal must occur within thirty (30) days of the actual termination date and Lessee must continue to pay all Rent during that period.

### **9.4 Holding Over**

If Lessee holds over after the expiration or earlier termination of this Lease, and the Port and Lessee have not otherwise agreed in writing upon the terms and provisions of such holding over, Lessee shall be deemed by the Port to be either a month-to-month holdover tenant or a tenant at sufferance and Lessee shall remain bound by all terms, covenants, and agreements hereof. If Lessee is deemed to be a holdover tenant, Lessee and the Port agree that: (i) the tenancy shall be from month-to-month and may be terminated at any time by thirty (30) days prior written notice from either party to the other; (ii) title to the Improvements shall, at the Port's option and in accordance with Section 9.2, vest in the Port as of the date of termination or expiration; and (iii) the Port shall have the right to adjust the rental payments, charges or use fees upon thirty (30) days written notice to Lessee. In the event that the Port deems Lessee a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the Port may take immediate action to evict Lessee without notice and may otherwise exercise any other rights and remedies available to it at law or in equity for breach of this Lease. In the event that Lessee



is a holdover tenant or a tenant at sufferance beyond June 30 of any year, Lessee shall be responsible for payment of property taxes for the entire following tax year without proration.

## **10. DEFAULT**

### **10.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default":

#### **10.1.1 Default in Rent**

Failure of Lessee to pay any Rent or other amount payable to the Port or to others as provided in this Lease within ten (10) days of the date such payment is due. No notice by the Port that Rent or such other amount is past due shall be required.

#### **10.1.2 Default in Other Covenants**

Failure of Lessee to comply with any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) within thirty (30) days after written notice by the Port describing the nature of the default. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the Port. Notwithstanding the foregoing, the Port need not give notice for a similar type of default more than twice during the Lease Term, and a failure to perform such type of obligation after the second notice constitutes an Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any Event of Default threatens to cause serious harm to the Port or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief.

#### **10.1.3 Insolvency**

The insolvency of Lessee shall be an Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Lease, "Insolvency" shall, to the extent permitted by the United States Bankruptcy Code, be deemed to include an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within thirty (30) days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within thirty (30) days.

#### **10.1.4 Abandonment**

Failure of Lessee for thirty (30) days or more to use and occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease shall be considered "Abandonment." No notice that an Event of Default has occurred shall be required from the Port.

## **10.2 Remedies on Default**

Upon the occurrence of an Event of Default, the Port at its option may terminate the Lease or terminate Lessee's right to possession of the Premises and at any time may exercise any other remedies available under law or equity for such Event of Default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. Without limiting the foregoing, upon the occurrence of an Event of Default, the Port may exercise any or all of the following remedies:

### **10.2.1 Re-entry**

The Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

### **10.2.2 Rent Recovery**

Whether or not the Port retakes possession of the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the default. Damages shall include, without limitation: all Rents lost; all legal expenses and other related costs incurred by the Port as a result of Lessee's default; that portion of any leasing commission paid by the Port as a result of this Lease which can be attributed to the unexpired portion of this Lease; all costs incurred by the Port in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting; and all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the default.

### **10.2.3 Reletting**

The Port, at its option may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before, on or after the expiration date of the Lease Term, at such rent and upon such conditions (including concessions and free rent periods) as the Port, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Premises, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve the Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make such physical changes to the Premises as the Port, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. If there is other unleased space in the Building or in other Port owned buildings, the Port shall have no obligation to attempt to relet the Premises prior to leasing such other space. In no event shall the Port be required to attempt to relet the Premises to a potential lessee with whom the Port has been negotiating a lease for other space owned by the Port or to whom the Port has shown other space owned by the Port. The Port shall be entitled to use its best efforts to lease such other Port space to such prospective tenant.



#### **10.2.4 Recovery of Damages**

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rents reserved in this Lease (including an estimated amount of Operating Expenses as determined by the Port) for the balance of the Lease Term after the award, and the fair rental value of the premises for the same period. If the Port has relet all or any part of the Premises for the period which otherwise would have constituted all or any part of the unexpired portion of the Lease Term, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair rental value for the part or whole of the Premises so relet during the term of the reletting.

#### **10.3 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **10.4 Termination**

Even though Lessee has breached this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for default and may be included in a notice of failure of compliance. No such termination shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

#### **10.5 Curing Lessee's Defaults**

If Lessee shall default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such default continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as Additional Rent, any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. The Port shall have the same rights and remedies in the event of the nonpayment of sums due to be reimbursed under this Section as in the case of default by Lessee.



in the payment of any other Rent. Any sums to be so reimbursed shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less.

#### **10.6 Default by Port**

In the event of any default by the Port, Lessee's exclusive remedy shall be an action for damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have thirty (30) days within which to cure any such default, or if such default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Premises and not thereafter, subject to Section 11.3 below.

### **11. ASSIGNMENT, SUBLEASE AND TRANSFER**

#### **11.1 Prohibition**

This Lease is personal to Lessee. Therefore, unless otherwise provided in this Lease, no part of the Premises, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means, without the prior written consent of the Port. Whether to deny or grant any such request shall be in the Port's sole discretion. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law. If Lessee is a corporation or other entity, change in ownership of the controlling interest in the stock of the corporation or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed an assignment of this Lease requiring the Port's consent.

#### **11.2 Effect of Consent**

No assignment or subletting by Lessee shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is given by the Port. Any consent by the Port to a particular assignment or sublease shall not constitute the Port's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the signed assignment or sublease document to the Port promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that the Port have the right to enforce such terms and conditions directly against such assignee or subtenant.

#### **11.3 Transfer by the Port**

At any time after the Commencement Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, the Lessee

shall attorn to said transferee and recognize transferee as the new Lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations of the Port under this Lease.

#### **11.4 Estoppel Certificates**

Lessee agrees to execute and deliver to the Port, at any time and within ten (10) days after written request, a statement certifying: (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (b) the dates to which Rent has been paid; (c) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (d) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten (10) days after the Port's written request therefor, Lessee shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement.

### **12. GENERAL PROVISIONS**

#### **12.1 Covenants, Conditions, and Restrictions**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon the Premises and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port.

#### **12.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon.

#### **12.3 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

#### **12.4 Port Consent**

Wherever this Agreement requires the Port's consent or approval, such consent or approval may be given by the Port's Commission, the Executive Director of the Port or the Executive Director's designee. If Lessee requests the Port's consent or approval pursuant to any



provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and the Port has, in fact, acted unreasonably in either of those instances.

#### **12.5 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

#### **12.6 Notices**

All general correspondence with the Port may be sent to:

The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn: Marine Contracts Administrator

All notices required or desired to be given under this Agreement shall be in writing and may be delivered by personal delivery or by placement in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

The Port Of Portland  
700 N.E. Multnomah  
Portland, Oregon 97213  
Attn: Marine Contracts Administrator

with copy to:

The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn: Legal Department

and to Yokota at:

Yokota International, Inc.  
3556 NW Front Avenue, Suite 380  
Portland, OR 97210  
Attn: Steve Yokota

Any notice delivered by personal delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth in this Agreement shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

#### **12.7 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

#### **12.8 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision.

#### **12.9 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

#### **12.10 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **12.11 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

#### **12.12 Lease Subject to Bonds and Ordinances.**

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises. Lessee agrees that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said land and the Port's interest in the leasehold, and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith.

#### **12.13 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party including other tenants. The Port shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. The Port shall not be liable for the consequence of admitting by passkey or refusing to admit to the Premises, Lessee or any of Lessee's agents or employees or other persons claiming the right of admittance.

#### **12.14 Headings**

The article and section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.



#### **12.15 Exhibits Incorporated by Reference**

All Exhibits attached to this Lease are incorporated by reference in this Lease for all purposes.

#### **12.16 Modification**

This Lease may not be modified except by a writing signed by the parties hereto.

#### **12.17 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Lease requires Lessee to defend the Port, it is agreed that such defense shall be by legal counsel acceptable to the Port.

#### **12.18 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written between the parties hereto with respect to such leasing. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the claimed breach of any representations or promises not expressly stated in this Lease, any other oral agreement with the Port being expressly waived by Lessee.

#### **12.19 Successors**

The rights, liabilities and remedies provided for in this Lease shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

#### **12.20 Joint and Several Obligations**

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.



**12.21 Execution of Multiple Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

**12.22 Defined Terms**

Capitalized Terms shall have the meanings given them in the text of this Lease.

**12.23 No Limit on Port's Powers**

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers in any way, including such as may affect the Port, the Premises, or any other area under the jurisdiction of the Port, and including the Port's powers of eminent domain.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first above.

LESSEE

LESSOR

YOKOTA INTERNATIONAL, INC.

THE PORT OF PORTLAND

By: Steve Yokota  
Steve Yokota

By: Mike Thorne  
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By: V. J. Sullivan  
Counsel for Port of Portland

99-240

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# OFFICE LEASE

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*BETWEEN*

THE PORT OF PORTLAND

(the Lessor)

*AND*

PHILIPPINES, MICRONESIA & ORIENT NAVIGATION  
COMPANY

(the "Lessee")

Dated as of: 11/1/99

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**OFFICE LEASE  
PHILIPPINES, MICRONESIA & ORIENT NAVIGATION COMPANY  
T-2 ADMINISTRATION BUILDING**

This **LEASE** (this "Lease"), effective Nov. 1, 1999 ("Effective Date") is between **THE PORT OF PORTLAND**, a Port district of the State of Oregon (the "Port") and **PHILIPPINES, MICRONESIA & ORIENT NAVIGATION COMPANY**, ("Lessee").

**RECITALS**

A. Philippines, Micronesia & Orient Navigation Company (PM&O) has been occupying office space attached to Warehouse 205 at the Port's Terminal 2 under a Permit & Right of Entry since August 1, 1996.

B. PM&O and the Port would now like to enter into a Lease agreement for office space in the Terminal 2 Administration Building.

Therefore, the parties intending to be legally bound by the terms of this Lease, agree as follows:

**1. AGREEMENT TO LEASE**

**1.1 Agreement to Lease and Description of Property**

The Port leases to Lessee and Lessee leases from the Port office space identified as Room 381 located on the third floor of the T-2 Administration Building (the "Building") at 3556 NW Front Avenue consisting of approximately 158 square feet of space, as shown on Lease Plat to be delivered separately as **Exhibit A** to this Lease (the "Premises").

**1.2 Use of Premises**

**1.2.1 Permitted Use**

Lessee may use the Premises only for general office use. No other use may be made of the Premises without the prior written consent of the Port.

**1.2.2 Limits on Use**

**1.2.2.1** Lessee shall not, without the prior written consent of the Port, use any device which would violate any local noise ordinance or cause substantial noise, vibration, fumes or electronic interference on the Premises.

**1.2.2.2** No satellite or electronic transmitting devices (other than telephone, telex or telefax machines) shall be installed, maintained or operated on the Premises except with the written approval of the Port.

**1.2.2.3** Lessee shall not overload the electrical circuits from which Lessee obtains current. Electrical service furnished will be 110 volts unless different service already exists in the Premises. Lessee shall provide Lessee's own surge protection for power furnished to computers and any other electronic devices/equipment approved for use by the Port. If Lessee wishes to use equipment other than standard office equipment, Lessee must obtain the Port's written permission to operate it during specified hours.

**1.2.2.4** Lessee shall not use or permit anyone else to use the Premises, nor shall Lessee permit anything to be done on the Premises, which: (a) adversely affects or is likely to adversely affect the Premises; (b) creates any condition that may be a safety hazard; (c) creates or tends to create a nuisance; or (d) interferes in any way with Terminal 2 operations.

### **1.3 Appurtenant Rights**

Lessee, Lessee's customers, employees, and invitees shall have the nonexclusive right to use the Building's Common Areas in common with the Port and with others to whom the Port has granted or may grant such right. The term "Common Areas" generally means existing building hallways, lobby areas, bathrooms, sidewalks, the parking area and any other areas designated as Common Areas by the Port. Except as set forth in this Section, no other appurtenant rights are granted as part of this Lease.

## **2. TERM**

The term of this Lease ("Term") shall commence on October 30, 1999, (the "Effective Date") and expire September 30, 2000, (the "Expiration Date") unless sooner terminated pursuant to the terms of this Lease.

### **2.1.1 Amendments**

If the Port and Lessee agree to extend, the Port may elect to require amendments to this Lease to incorporate any provisions from the Port's then current leases considered to be standard provisions by the Port. If the Port requires amendments to the Lease, the Port shall give notice to Lessee within fifteen (15) days after receipt of the written agreement to extend. Along with such notice, the Port shall send Lessee a copy of the proposed amendments to the Lease. If the Port makes such election, Lessee shall have ten (10) days after delivery of the Port's notice to withdraw its agreement to the Extension Option by written notice to the Port; otherwise, Lessee shall be deemed to have accepted the Port's required changes.

## **3. RENT**

### **3.1 Basic Rent, Operating Expenses, and Rent**

Lessee shall pay to the Port monthly Rent, comprised of Basic Rent and Operating Expenses, set forth in the table below and adjusted as provided in Sections 3.2 and 3.3, for the Premises. "Rent," as used herein, shall mean Basic Rent and Operating Expenses together.

| Date             | Square Feet | Basic Rent | Operating Expense | Total per Sq. Ft. | Annual Rent | Monthly Rent |
|------------------|-------------|------------|-------------------|-------------------|-------------|--------------|
| October 30, 1999 | 158         | \$10.32    | \$6.77*           | \$17.09           | \$2,700.00* | \$225.00*    |

\*To be adjusted annually effective July 1, according to Section 3.2

### **3.2 Adjustments to Operating Expenses**

Lessee shall pay a per square foot rate to cover Operating Expenses for the Premises. "Operating Expenses" are costs of operating, repairing, servicing and maintaining the Building and Common Areas, and include real property taxes; all water and sewer charges; the cost of



heating and electricity provided to the Building (including the Premises); janitorial and cleaning supplies and services; costs of maintenance and landscaping services for the exterior Common Areas; administration costs and management fees; superintendent fees; security services, if any; insurance premiums; licenses and permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; and the annual amortized capital improvement costs (amortized over a period of time and at an interest rate selected by the Port).

Operating Expenses shall be calculated in accordance with the Port's standard real estate accounting practices. The Port may include in Operating Expenses any costs attributable to support services provided by the Port to administer the Port's obligations relating to the Building and Common Areas, and costs incurred by the Port in connection with the accounting and billing of Operating Expenses. Subsequent to, but effective as of July 1 of each year, the Port shall determine per square foot Operating Expenses for the upcoming Fiscal Year (currently July 1 through June 30). Lessee's monthly Rent payment shall then be adjusted to reflect the new Operating Expense amount. If Lessee makes payments before the new rate is announced, Lessee will be invoiced the difference and will pay that difference per the invoice terms.

### **3.3 Adjustments to Basic Rent**

Basic Rent of \$10.32 per square foot shall be in effect through September 30, 2000.

### **3.4 Prepayment of Rent**

Rent for the first month shall be paid upon execution of this Lease. If the Effective Date occurs on a day other than the first day of a calendar month, Rent for that partial calendar month shall be prorated based on the number of days remaining in the month.

### **3.5 Rent Payments**

Lessee shall make a combined payment of Basic Rent and Operating Expenses, in advance, on or before the first day of each calendar month ("Due Date").

#### **3.5.1 No Offset**

Payment of Rent and other amounts due under this Lease shall be made without offset, abatement or deduction, to the Port at the following address or such other place as the Port may designate:

The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, Oregon 97208-4900

#### **3.5.2 Delinquency Charge**

All Rent not paid when due shall bear a Delinquency Charge of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, whichever is less (the "Delinquency Charge"). Such interest shall be charged from the date due until the Rent and the Delinquency Charge are both paid in full. This Delinquency Charge is subject to periodic change, at the Port's sole discretion. No change shall occur, however, without at least thirty (30)



days prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to timely pay Rent.

### **3.6 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default (as hereinafter defined) nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in default and obligated to pay all Rent due even if the Port has accepted a partial or late payment of Rent.

### **3.7 Real Property Tax**

"Real Property Taxes" means all taxes and assessments of any public authority against the Building and the real property on which it is located, including rent taxes, gross receipt taxes, business license taxes and fees for permits for the Building, and any other tax or charge levied wholly or partly in lieu thereof, and the cost of contesting the same. Lessee shall pay monthly, on the first day of every month, together with Basic Rent and as a part of Lessee's share of Operating Expenses, lessee's proportionate share of Real Property Taxes. If any portion of the Building is occupied by a tax-exempt tenant so that the Building has a partial tax exemption under Oregon law, then, in computing Real Property Taxes (or any increase thereof), Real Property Taxes shall be calculated taking that exemption into account. If a separate assessment or identifiable tax increase arises because of Lessee's improvements to Lessee's Premises, then Lessee shall pay one hundred percent (100%) of such assessment or increase attributable to those improvements made by Lessee. Notwithstanding that Real Property Taxes will be paid to the Port on a monthly basis as part of the Operating Expense charge, because Real Property Taxes are assessed by the County on an annual basis, Lessee shall be responsible for Lessee's Proportionate Share of the taxes for the entire tax year (currently July 1 - June 30) even if Lessee's Lease terminates prior to the expiration of the tax year. However, if the Premises is leased to another tenant for the balance of any tax year, then those taxes paid by the new tenant will be used to offset those taxes paid by Lessee.

### **3.8 Other Taxes**

Lessee shall pay when due, all taxes and fees assessed against and levied against Lessee's fixtures, equipment, furnishings and personal property located in or on the Premises or elsewhere in the Building or Common Areas. Lessee shall cause Lessee's trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of the Port. If any of Lessee's personal property is assessed with the Port's real property, Lessee shall pay to the Port the taxes attributable to Lessee's own property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.



#### **4. LESSEE'S OTHER OBLIGATIONS**

##### **4.1 Construction of Improvements**

##### **4.2 Port Approval**

Lessee shall undertake no construction, alteration, or changes ("Work") on or to the Premises without the prior written consent of the Port. The Port may require Lessee to submit to the Port for approval any of the following: the name of the proposed contractor; final plans and specifications; a site-use plan; and architectural renderings. Approval must be obtained prior to application for any building or similar permit. The Port may condition its approval on Lessee's obtaining and delivering to the Port a performance bond and a labor and materials payment bond (issued by a corporate surety satisfactory to the Port and licensed to do business in Oregon), each in an amount equal to the estimated cost of the construction and in a form satisfactory to the Port. All improvements installed on the Premises by Lessee shall be the property of Lessee until termination of this Lease. Upon termination, however, such Improvements shall be deemed a part of the Premises, at the option of the Port, as more specifically provided in Section 9. "Improvements" shall mean all improvements made to and affixed to the Premises by either the Port or by Lessee.

##### **4.2.1 Permits and Licenses**

No Work may commence until Lessee obtains and delivers to the Port copies of all necessary governmental permits and licenses.

##### **4.2.2 Other Requirements**

All Work shall be performed in a good and workmanlike manner and in conformance with applicable Port Rules and all permit requirements. All Work shall be done with reasonable dispatch. If requested by the Port, within thirty (30) days after the completion of any Work covered by this Section 4, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed Work, prepared by an architect or engineer licensed by the State of Oregon.

#### **4.3 Maintenance**

##### **4.3.1 General**

Except for those responsibilities which are specifically designated as the responsibility of the Port in Section 5, Lessee shall keep and maintain the Premises and all Improvements in good repair and operating condition and shall make all necessary and appropriate preventive maintenance, repairs, and replacements. Such maintenance includes, but is not limited to, the walls, floors, floor coverings, ceilings, lamps and lamp fixtures.

##### **4.3.2 Maintenance Standards**

Lessee shall regularly and consistently maintain the Premises at all times in a clean, orderly and safe condition. Lessee shall also comply with any specific published or posted Port maintenance standards for the Building. Lessee shall comply with all applicable manufacturer's recommended maintenance standards for all systems, and equipment located within the Premises, and, whether or not such manufacturer's standards exist, shall take appropriate preventative maintenance actions so as to maximize their useful lives.



#### **4.4 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises other than any such sums related to the construction of the Improvements by the Port. If any lien is filed against the Premises which Lessee wishes to protest, then Lessee shall immediately deposit cash with the Port, or procure a bond acceptable to the Port, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish the cash or bond acceptable to the Port within ten (10) days shall constitute an Event of Default under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Lessee shall not encumber the Premises or any Improvements thereon without prior written approval of the Port.

#### **4.5 Utilities and Services**

The following utilities are included in Operating Expenses and provided by the Port: Electrical, heat, sanitary sewer and water. Lessee must make arrangement for any other utilities and shall promptly pay such other utility charges before delinquent. Interruption of services or utilities shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises, render the Port liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Lease, including full payment of all Rent due.

#### **4.6 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

#### **4.7 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (i) Confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made on reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry except to the extent caused by the gross negligence or willful misconduct of the Port. The Port shall, at all times, retain a key with which to unlock all doors in, upon or about the Premises, and the Port shall have the right to use any and all means which the Port may deem reasonable to open such doors in an emergency in order to obtain entry into the Premises.

#### **4.8 Safety Requirements**

Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local



laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in the Building.

## **5. PORT AUTHORITY AND OBLIGATIONS**

### **5.1 Delivery of Property**

Lessee shall have the right to possession of the Premises as of the Effective Date of this Lease. Delayed possession shall not advance the Expiration Date of this Lease. The Port shall have no liability to Lessee for any delay in delivering possession.

### **5.2 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights of condemnation under Oregon law, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

### **5.3 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "AS IS" condition upon taking possession. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. Unless otherwise agreed to in writing by the Port, the Port shall have no responsibility to bring the Premises into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws. Lessee shall also be solely responsible for ensuring that the Premises meets all requirements of the Americans With Disabilities Act (ADA).

### **5.4 Port Repair Obligation**

The Port shall be responsible for the repair and maintenance of the Building exterior, roof, utilities, Common Areas, and the HVAC system. Except as stated herein, the Port shall have no other maintenance or repair responsibilities of any nature whatsoever, including maintenance or repair of existing improvements. The Port shall have no liability for failure to perform any such required maintenance and repair unless written notice of the need for such maintenance or repair for which the Port is responsible is given by Lessee and the Port fails to commence efforts to remedy the problem in a reasonable time and manner. The Port shall have no liability for interference with Lessee's use which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other eviction of Lessee. Rent shall not be reduced during any such repair period. Notwithstanding



the foregoing, any repair of damage caused by negligence or breach of this lease by Lessee, Lessee's subtenants, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be done at Lessee's sole expense.

## **5.5 Port's Right to Relocate**

### **5.5.1 Port's Obligation to Operate Port Properties**

Lessee acknowledges the Port's responsibility to the public to prudently operate, maintain and develop the Port's facilities. In executing this responsibility, the Port shall have the right to undertake developments, renewals, replacements and maintenance which the Port, in its sole discretion, deems prudent or necessary. Such right shall include the right of the Port to relocate Lessee, reduce the Premises, or otherwise provide for the termination of Lessee's rights under this Lease in the event that Lessee's possession of the Premises conflicts with proposed Port developments, renewals, replacements, use of or maintenance of Terminal 2.

### **5.5.2 Terms of Relocation**

The Port's rights to relocate Lessee, reduce the Premises' size or terminate Lessee's rights to possess the Premises absent a default by Lessee and except as otherwise provided by this Lease, shall be subject to and in accordance with the following terms and conditions:

### **5.5.3 Notification**

**5.5.3.1** The Port shall provide at least sixty (60) days' advance written notice to Lessee prior to requiring Lessee to relocate or reduce the Premises. Lessee may terminate this Lease by notice given within thirty (30) days after the Port's notice. If the Port requires Lessee to relocate, or if Lessee requests a relocation in the event that the Port requires a reduction or termination, the parties shall attempt to agree upon a substitute facility elsewhere on property owned by the Port. Lessee acknowledges that relocation space may not be available.

**5.5.3.2** The Port and Lessee shall negotiate in good faith to fairly compensate Lessee for the direct costs of a relocation under this Section 5.5.

**5.5.3.3** In the event the Port determines that a suitable replacement facility or area owned by the Port cannot be found or in the event that the parties cannot reach agreement for compensation within thirty (30) days after the Port's initial notice, then in either event the Port shall have the right, upon thirty (30) days' written notice to Lessee, to terminate this Lease and take possession of the Premises and title to all of the Improvements therein.

## **5.6 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: To adjust the boundaries of, expand or delete Common Areas and correspondingly adjust the Operating Expenses; to change Port Rules for the use of the Common Areas; to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has ingress and egress to the Premises); to construct additional buildings or other improvements in the Common Areas; to evict anyone from the

Common Areas who fails to comply with any applicable laws including applicable Port Ordinances and/or Port Rules.

## **6. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **6.1 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises in compliance with all applicable laws and regulations and the environmental provisions of this Lease.

### **6.2 Use of Hazardous Substances**

Lessee shall be permitted to only use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of small quantities of ordinary janitorial, office and landscaping supplies available at retail. Lessee must obtain the Port's prior written approval to bring any other hazardous substances onto the Premises.

### **6.3 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises concerning environmental compliance.

### **6.4 Environmental Response and Notice**

In the event of an environmental incident of any kind, Lessee shall be responsible for all necessary response and shall promptly notify the Port of the incident and the response. If notice must be given on the weekend or after 5:00 p.m. on any day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number currently is (503) 240-2230.

### **6.5 Lessee's Records**

Lessee shall maintain for the duration of the Lease Term, Material Safety Data Sheets (MSDS) for all Hazardous Substances used or stored on the Premises in a place known to and accessible to the Port.

## **7. INDEMNITY, INSURANCE**

### **7.1 General Indemnity; Reimbursement for Damage**

Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against any and all claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Costs and/or penalties (collectively "Costs") which may be imposed upon or claimed against or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's negligence or willful misconduct: (a) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors resulting in damages or loss to a third party; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by Lessee, including any



accident, injury or damage occurring on or about the Premises resulting from such condition; (d) any breach, violation or nonperformance of any of Lessee's obligations under this Agreement; or (e) any damage caused by Lessee on or to the Premises. For purposes of this Section, "Lessee" shall be deemed to include Lessee and all of Lessee's respective partners, officers, directors, agents, employees, invitees, licensees, and/or contractors

## **7.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

### **7.2.1 Certificates; Notice of Cancellation**

On or before the Effective Date, and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance policies required under this Section. No insurance policy may be canceled, materially revised, or allowed to expire without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the Lease Term. The Port shall also be given certified copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Port to identify a deficiency from evidence that is provided, shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

### **7.2.2 Additional Insured; Separation of Insureds**

The Port shall be named as an additional insured in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage as provided under a standard Separation of Insureds clause published by the Insurance Services Office ("ISO"), or a successor organization.

### **7.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

### **7.2.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon thirty (30) days written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

## **7.3 Required Insurance**

At all times during the Lease Term, Lessee shall provide and maintain the following types of coverage:



### **7.3.1 Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall be written on an ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Lessee shall maintain fire legal liability insurance in an amount equal to ONE HUNDRED THOUSAND DOLLARS (\$100,000) per occurrence.

### **7.3.2 Automobile Liability Insurance**

In the event that automobiles are used in connection with Lessee's business or operations at the Premises, Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property and relating to the use, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) each accident.

### **7.3.3 Workers' Compensation Insurance**

In accordance with Oregon law and the Longshore and Harbor Workers' Compensation Act, Lessee shall maintain in force workers' compensation insurance for all of Lessee's employees, including coverage for U.S. Longshore & Harbor Workers' Act claims, if applicable. Lessee shall also maintain employer's liability coverage in an amount of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per accident and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon (and the U.S. Department of Labor, if applicable) and a policy of excess workers' compensation and employer's liability insurance.

### **7.4 Lessee's Risks**

Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (i) business interruption, such as gross earnings, extra expense, or similar coverage; (ii) personal property; and/or (iii) automobile physical damage and/or theft. In no event shall the Port be liable for any (a) business interruption or other consequential loss sustained by Lessee; (b) damage to, or loss of, personal property; or (c) damage to, or loss of, an automobile, whether or not such loss is insured.

### **7.5 Waiver of Subrogation**

If any of Lessee's property or automobile insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to loss, Lessee shall cause it to be endorsed with a waiver of subrogation that allows the waivers required by this Section. Lessee and the Port waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other



tenants of the Premises for any loss, cost, damage or expense (collectively, "Loss") to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Lessee waives any right of action it and/or its insurance carrier might have against the Port (including its respective employees, officers, commissioners, or agents) for any Loss to the extent such Loss is covered under any applicable automobile liability policy or policies required by this Lease. Lessee also waives any right of action it and/or its insurance carrier might have against the Port (including its employees, officers, commissioners or agents) for any Loss expressed in Section 7.4, whether or not such Loss is insured.

#### **7.6 Periodic Review**

The Port shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the Port reasonably determines that such types, limits, and/or terms should be changed, the Port will give Lessee a minimum of thirty (30) days notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

#### **7.7 Survival of Indemnities**

The indemnity agreements set forth in Sections 7.1 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

### **8. DAMAGE OR DESTRUCTION**

#### **8.1 General**

In the event the Building or any other Improvements are partially or completely destroyed, the Port shall be under no obligation to repair and reconstruct the Building and/or such other Improvements, and the Port may terminate this Lease.

#### **8.2 Port Reconstruction**

If the Port elects to restore the Building and/or such other Improvements, the Port's obligations shall be limited to the repair or reconstruction of the Building and/or such other Improvements to substantially the same condition as when delivered to Lessee and shall further be limited to the extent of the insurance proceeds available to the Port for such restoration. Lessee shall be responsible for replacement of Lessee's own Improvements, furniture, equipment, and supplies. No damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises or of the Building. The Port shall not be required to do any such repair or restoration work except during business hours of business days but will proceed to restore the Building with reasonable diligence. The Port shall not be obligated to insure or protect against loss by fire or other casualty to the contents of the Premises, and shall not be obligated to repair any damage to or replace any Improvements paid for by Lessee or any of Lessee's equipment, inventory or personal property. Lessee is responsible for maintaining insurance coverage for all personal property located in the Premises, including Lessee's trade fixtures.



### **8.3 Rent Reduction**

Rent payments payable under this Lease shall be proportionately paid up to the time of such damage or destruction and shall then abate proportionately to the area of the Premises rendered unusable until such time as the Premises may be fully restored. However, if the Premises are damaged, destroyed or rendered untenable as a result of the negligent act or omission of Lessee, Rent shall not abate and the Port may, in its discretion, require Lessee to repair and reconstruct such Premises and pay the costs of repair in excess of insurance proceeds recovered therefor; or, if Lessee fails or refuses to complete such reconstruction, the Port may itself choose to repair and reconstruct such Premises and Lessee shall be responsible for reimbursing the Port for the costs and expenses incurred in such repair in excess of insurance proceeds recovered therefor.

## **9. TERMINATION**

### **9.1 Termination by Either Party**

The Port shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

### **9.2 Duties on Termination**

Upon termination of the Lease for any reason, Lessee shall deliver all keys, including those for the mailbox, to the Port and surrender the Premises and all Improvements in good clean condition. All Improvements on the Premises, whether constructed by the Port or by Lessee, shall, at the Port's option, become Port property and shall not be removed unless the Port directs Lessee to remove such Improvements, in which case Lessee must promptly remove the Improvements and then repair any damage to the Premises. All repair for which Lessee is responsible shall be completed prior to termination and surrender.

### **9.3 Lessee's Personal Property**

#### **9.3.1 Removal Requirement**

Furniture, decorations, detached floor covering, curtains, blinds, furnishings and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee at Lessee's expense, and shall remain the property of Lessee upon termination of this Lease if Lessee is not in default at the time of termination of the Lease, and if they are removed from the Premises no later than fourteen days after termination. Lessee shall remove its trade fixtures, signs, and personal property in a manner and at times that do not interrupt operation of the Port facilities. Lessee shall repair all damage done to the Premises or other Port-owned property resulting from the removal of such trade fixtures, signs, and personal property and shall restore the Premises and other Port-owned property to the state of good repair that existed prior to the installation of Lessee's trade fixtures, signs, and personal property, less normal wear and tear. Title to any items of Lessee's trade fixtures and other personal property which remain on the Premises beyond the time allowed in this Section may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (a) retaining any or all of such trade fixtures and other personal property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such trade fixtures and other



personal property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

#### **9.3.2 Time for Removal**

The time for removal of any property which Lessee is required to remove from the Premises upon termination shall be as follows: (a) within thirty (30) days after notice from the Port requiring such removal where the property to be removed is an Improvement which Lessee is not required to remove except after election or notice by the Port; or (b) if this Lease is terminated unexpectedly due to a casualty loss, condemnation, an uncured Event of Default or for any other reason prior to the Expiration Date, then all removal must occur within thirty (30) days of the actual termination date and Lessee must continue to pay all Rent during that period.

#### **9.4 Holding Over**

If Lessee holds over after the expiration or earlier termination of this Lease, and the Port and Lessee have not otherwise agreed in writing upon the terms and provisions of such holding over, Lessee shall be deemed by the Port to be either a month-to-month holdover tenant or a tenant at sufferance and Lessee shall remain bound by all terms, covenants, and agreements hereof. If Lessee is deemed to be a holdover tenant, Lessee and the Port agree that: (i) the tenancy shall be from month-to-month and may be terminated at any time by thirty (30) days prior written notice from either party to the other; (ii) title to any Improvements shall, at the Port's option and in accordance with Section 9.2, vest in the Port as of the date of termination or expiration; and (iii) the Port shall have the right to adjust the rental payments, charges or use fees upon thirty (30) days written notice to Lessee. In the event that the Port deems Lessee a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the Port may take immediate action to evict Lessee without notice and may otherwise exercise any other rights and remedies available to it at law or in equity for breach of this Lease. In the event that Lessee is a holdover tenant or a tenant at sufferance beyond June 30 of any year, Lessee shall be responsible for payment of property taxes for the entire following tax year without proration.

### **10. DEFAULT**

#### **10.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default":

##### **10.1.1 Default in Rent**

Failure of Lessee to pay any Rent or other amount payable to the Port or to others as provided in this Lease within ten (10) days of the date such payment is due. No notice by the Port that Rent or such other amount is past due shall be required.

##### **10.1.2 Default in Other Covenants**

Failure of Lessee to comply with any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) within thirty (30) days after written notice by the Port describing the nature of the default. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done



to the satisfaction of the Port. Notwithstanding the foregoing, the Port need not give notice for a similar type of default more than twice during the Lease Term, and a failure to perform such type of obligation after the second notice constitutes an Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any Event of Default threatens to cause serious harm to the Port or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief.

#### **10.1.3 Insolvency**

The insolvency of Lessee shall be an Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Lease, "Insolvency" shall, to the extent permitted by the United States Bankruptcy Code, be deemed to include an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within thirty (30) days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within thirty (30) days.

#### **10.1.4 Abandonment**

Failure of Lessee for thirty (30) days or more to use and occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease shall be considered "Abandonment." No notice that an Event of Default has occurred shall be required from the Port.

### **10.2 Remedies on Default**

Upon the occurrence of an Event of Default, the Port at its option may terminate the Lease or terminate Lessee's right to possession of the Premises and at any time may exercise any other remedies available under law or equity for such Event of Default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. Without limiting the foregoing, upon the occurrence of an Event of Default, the Port may exercise any or all of the following remedies:

#### **10.2.1 Re-entry**

The Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

#### **10.2.2 Rent Recovery**

Whether or not the Port retakes possession of the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the default. Damages shall include, without limitation: all Rents lost; all legal expenses and other related costs incurred by the Port as a result of Lessee's default; that portion of any leasing commission paid by the Port as a result of this Lease which can be attributed to the unexpired portion of this Lease; all costs incurred by the Port in restoring the Premises to good order and condition, or in remodeling, renovating or



otherwise preparing the Premises for reletting; and all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the default.

#### **10.2.3 Reletting**

The Port, at its option may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before, on or after the expiration date of the Lease Term, at such rent and upon such conditions (including concessions and free rent periods) as the Port, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Premises, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve the Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make such physical changes to the Premises as the Port, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. If there is other unleased space in the Building or in other Port owned buildings, the Port shall have no obligation to attempt to relet the Premises prior to leasing such other space. In no event shall the Port be required to attempt to relet the Premises to a potential lessee with whom the Port has been negotiating a lease for other space owned by the Port or to whom the Port has shown other space owned by the Port. The Port shall be entitled to use its best efforts to lease such other Port space to such prospective tenant.

#### **10.2.4 Recovery of Damages**

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rents reserved in this Lease (including an estimated amount of Operating Expenses as determined by the Port) for the balance of the Lease Term after the award, and the fair rental value of the premises for the same period. If the Port has relet all or any part of the Premises for the period which otherwise would have constituted all or any part of the unexpired portion of the Lease Term, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair rental value for the part or whole of the Premises so relet during the term of the reletting.

#### **10.3 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **10.4 Termination**

Even though Lessee has breached this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and



remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for default and may be included in a notice of failure of compliance. No such termination shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

#### **10.5 Curing Lessee's Defaults**

If Lessee shall default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such default continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as Additional Rent, any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. The Port shall have the same rights and remedies in the event of the nonpayment of sums due to be reimbursed under this Section as in the case of default by Lessee in the payment of any other Rent. Any sums to be so reimbursed shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less.

#### **10.6 Default by Port**

In the event of any default by the Port, Lessee's exclusive remedy shall be an action for damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have thirty (30) days within which to cure any such default, or if such default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Premises and not thereafter, subject to Section 11.3 below.

### **11. ASSIGNMENT, SUBLEASE AND TRANSFER**

#### **11.1 Prohibition**

This Lease is personal to Lessee. Therefore, unless otherwise provided in this Lease, no part of the Premises, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means, without the prior written consent of the Port. Whether to deny or grant any such request shall be in the Port's sole discretion. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law. If Lessee is a corporation or other entity, change in ownership of the



controlling interest in the stock of the corporation or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed an assignment of this Lease requiring the Port's consent.

#### **11.2 Effect of Consent**

No assignment or subletting by Lessee shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is given by the Port. Any consent by the Port to a particular assignment or sublease shall not constitute the Port's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the signed assignment or sublease document to the Port promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that the Port have the right to enforce such terms and conditions directly against such assignee or subtenant.

#### **11.3 Transfer by the Port**

At any time after the Effective Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, the Lessee shall attorn to said transferee and recognize transferee as the new Lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations of the Port under this Lease.

#### **11.4 Estoppel Certificates**

Lessee agrees to execute and deliver to the Port, at any time and within ten (10) days after written request, a statement certifying: (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (b) the dates to which Rent has been paid; (c) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (d) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten (10) days after the Port's written request therefor, Lessee shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement.

### **12. GENERAL PROVISIONS**

#### **12.1 Covenants, Conditions, and Restrictions**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other



matters of record now or hereafter imposed upon the Premises and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port.

#### **12.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon.

#### **12.3 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

#### **12.4 Port Consent**

Wherever this Agreement requires the Port's consent or approval, such consent or approval may be given by the Port's Commission, the Executive Director of the Port or the Executive Director's designee. If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and the Port has, in fact, acted unreasonably in either of those instances.

#### **12.5 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

#### **12.6 Notices**

All general correspondence with the Port may be sent to:

The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn: Marine Contracts Administrator

All notices required or desired to be given under this Agreement shall be in writing and may be delivered by personal delivery or by placement in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

The Port Of Portland  
121 NW Everett  
Portland, Oregon 97209  
Attn: Marine Contracts Administrator

and to PM&O at:

Philippines, Micronesia & Orient Navigation Company  
353 Sacramento Street  
San Francisco, CA 94111  
Attn: Chief Financial Officer

Any notice delivered by personal delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth in this Agreement shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

#### **12.7 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

#### **12.8 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision.

#### **12.9 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

#### **12.10 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **12.11 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

#### **12.12 Lease Subject to Bonds and Ordinances**

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises. Lessee agrees



that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said land and the Port's interest in the leasehold, and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith.

#### **12.13 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party including other tenants. The Port shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. The Port shall not be liable for the consequence of admitting by passkey or refusing to admit to the Premises, Lessee or any of Lessee's agents or employees or other persons claiming the right of admittance.

#### **12.14 Headings**

The article and section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

#### **12.15 Exhibits Incorporated by Reference**

All Exhibits attached to this Lease are incorporated by reference in this Lease for all purposes.

#### **12.16 Modification**

This Lease may not be modified except by a writing signed by the parties hereto.

#### **12.17 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Lease requires Lessee to defend the Port, it is agreed that such defense shall be by legal counsel acceptable to the Port.

#### **12.18 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written between the parties hereto with respect to such leasing. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the claimed breach of any representations or promises not

expressly stated in this Lease, any other oral agreement with the Port being expressly waived by Lessee.

#### 12.19 Successors

The rights, liabilities and remedies provided for in this Lease shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

#### 12.20 Joint and Several Obligations

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

#### 12.21 Execution of Multiple Counterparts

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

#### 12.22 Defined Terms

Capitalized Terms shall have the meanings given them in the text of this Lease.

#### 12.23 No Limit on Port's Powers

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers in any way, including such as may affect the Port, the Premises, or any other area under the jurisdiction of the Port, and including the Port's powers of eminent domain.


IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first above.

LESSEE

LESSOR

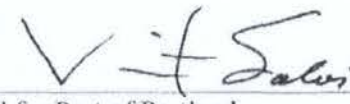
PHILIPPINES, MICRONESIA & ORIENT  
NAVIGATION COMPANY

THE PORT OF PORTLAND

By:   
Linda Cardenas  
Chief Financial Officer

By:   
Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland



**EXHIBIT A**

**THE PREMISES**

**Lease Plat to be sent separately**

99-257

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# OFFICE LEASE

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*BETWEEN*

THE PORT OF PORTLAND

(the Lessor)

*AND*

ALEXANDER GOW, INC.

(the Lessee)

Dated as of: November 20, 1999

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**OFFICE LEASE  
ALEXANDER GOW, INC.  
T-2 ADMINISTRATION BUILDING**

This **LEASE** (this "Lease"), effective December 1, 1999, ("Effective Date") is between **THE PORT OF PORTLAND**, a Port district of the State of Oregon (the "Port") and **ALEXANDER GOW, INC.**, ("Lessee").

**RECITALS**

A. Alexander Gow, Inc., is a marine surveying and insurance claim settling company headquartered in Seattle, Washington, with a branch in Portland, Oregon. Their office lease is set to expire December 1, 1999. The company is an active member of the maritime community and would be an asset to the Terminal 2 Administration Building make-up.

B. Alexander Gow would now like to enter into a Lease agreement for three years for office space in the Terminal 2 Administration Building.

Therefore, the parties intending to be legally bound by the terms of this Lease, agree as follows:

**1. AGREEMENT TO LEASE**

**1.1 Agreement to Lease and Description of Property**

The Port leases to Lessee and Lessee leases from the Port office space identified as Room 350 located on the third floor of the Terminal 2 Administration Building (the "Building") at 3556 NW Front Avenue, Portland, Oregon, consisting of approximately 682 square feet of space, as shown on Lease Plat \_\_\_\_\_ attached to this lease as **Exhibit A** (the "Premises").

**1.2 Use of Premises**

**1.2.1 Permitted Use**

Lessee may use the Premises only for general office use. No other use may be made of the Premises without the prior written consent of the Port.

**1.2.2 Limits on Use**

**1.2.2.1** Lessee shall not overload the electrical circuits from which Lessee obtains current. Electrical service furnished will be 110 volts unless different service already exists in the Premises.

**1.2.2.2** Lessee shall not use or permit anyone else to use the Premises, nor shall Lessee permit anything to be done on the Premises, which: (a) adversely affects or is likely to adversely affect the Premises; (b) creates any condition that may be a safety hazard; (c) creates or tends to create a nuisance; or (d) interferes in any way with Terminal 2 operations.

**1.3 Appurtenant Rights**

Lessee, Lessee's customers, employees, and invitees shall have the nonexclusive right to use the Building's Common Areas in common with the Port and with others to whom the Port



has granted or may grant such right. The term "Common Areas" means existing building hallways, lobby areas, bathrooms, sidewalks, the parking area and any other areas designated as Common Areas by the Port. Except as set forth in this Section, no other appurtenant rights are granted as part of this Lease.

## **2. TERM**

### **2.1 Initial Term**

The term of this Lease ("Term") shall commence on December 1, 1999, (the "Commencement Date") and expire November 30, 2002, (the "Expiration Date") unless sooner terminated pursuant to the terms of this Lease. The Lease Year ("Lease Year") shall be the twelve calendar months beginning December 1 and ending November 30.

### **2.2 Option to Extend**

Upon mutual agreement of the parties, Lessee shall have options (each an "Extension Option") to extend this Lease for two (2) successive terms of three (3) years each (each an "Extension Term"); provided that no Extension Option shall be effective if any uncured Event of Default (as defined in Section 10) exists under this Lease, either as of the date the Extension Option is exercised or on the date the Extension Term commences. The terms and conditions set forth in this Lease (as the same may be amended from time to time) shall continue during the Extension Term except: (i) Basic Rent, as defined in Section 3.1, shall be adjusted pursuant to Sections 3.2 and 3.3; and (ii) the Port may elect to require amendments to this Lease to incorporate the Port's then-current standard lease provisions. If the Port requires such amendments as a condition of the granting of the Extension Term, the Port shall provide a copy of such amendments to Lessee within thirty (30) days after receipt of Lessee's notice exercising an Extension Option. Lessee shall have thirty (30) days after delivery of the Port's proposed amendments to withdraw Lessee's exercise of the Extension Option by written notice of withdrawal to the Port; otherwise, Lessee shall be deemed to have accepted the Port's proposed amendments.

## **3. RENT**

### **3.1 Basic Rent, Operating Charge, and Rent**

Lessee shall pay an annual Rent to the Port, for the use of the Premises, comprised of Basic Rent of \$10.32 per square foot per year for each Lease Year of the Initial Term and an Operating Charge of \$6.68 per square foot per year for the first Lease Year, adjusted thereafter pursuant to Section 3.3. Such Rent for the Initial Term calculates to \$11,594.00 per year or \$966.17 per month, hereinafter referred to as "Basic Rent". "Rent," as used herein, shall mean Basic Rent and Operating Charge together.

### **3.2 Adjustment to Basic Rent**

Basic Rent is effective through the Expiration Date of the Initial Term. Beginning on the first day of any Extension Term, the Basic Rent shall adjust to the Market Rental Rate; provided, however, that in no event shall any Lease Rate be adjusted downward. The "Market Rental Rate" shall mean the Port's determination of comparable lease rates for office space for Class B



offices in the downtown area, under 50,000 square feet, using statistics compiled by the Building Owner's and Manager's Association (BOMA) or other comparable organizations.

### **3.3 Adjustments to Operating Charge**

Beginning July 1, 2000, and annually thereafter (the "Adjustment Date"), the Operating Charge, as defined herein, shall be adjusted to reflect the actual expenses for operating the Building for the preceding fiscal year. Lessee shall pay an Operating Charge ("Operating Charge") to cover Lessee's Proportionate Share of the Operating Expenses for the Building ("Lessee's Proportionate Share") based upon the ratio of the square feet of the Premises to the Building. "Operating Expenses" are costs of operating, repairing, servicing and maintaining the Building and Common Areas, and include real property taxes; water and sewer charges; the cost of heating and electricity provided to the Building (including the Premises); janitorial and cleaning supplies and services; costs of maintenance and landscaping services for the exterior Common Areas; the Port's administration costs and management fees; security services, if any; insurance premiums; licenses and permits for the operation and maintenance of the Building and all of its component elements and mechanical systems; and the annual amortized capital improvement costs (amortized over a period of time and at an interest rate selected by the Port).

### **3.4 Effective Date of Adjustment; Payment of Adjustments**

Lessee acknowledges that adjustments to the Operating Charge will be effective and payable as of the Adjustment Date, even though the new rate may not be able to be calculated until some time after the Adjustment Date. Lessee agrees to pay any difference between the Rent actually paid to the Port after the Adjustment Date and the amount due based on the adjustment of Operating Charges, within thirty (30) days after the Port's invoice therefor.

### **3.5 Security Deposit**

In addition to payments of Rent, Lessee shall deposit with the Port, upon or prior to execution of this Lease, cash or Letter of Credit in a form acceptable to the Port, in the amount equal to one (1) month's total rent as a security deposit (the "Deposit"). The Deposit shall not earn interest, shall not be considered to be held in trust for Lessee and shall not be considered an advance payment of rent or a measure of the Port's damages in the event of a default by Lessee, and may be commingled with other funds of the Port. The Port may, but shall not be obligated to, apply all or any part of the Deposit to Rent or other amount not paid by Lessee when due or any amount which the Port may expend or incur by reason of Lessee's failure to perform any obligation under this Lease. If the Port applies all or any part of the Deposit, Lessee shall, upon demand, immediately replenish the Deposit to its full amount. Upon Lessee's full performance of its obligations under this Lease, including the payment of any Real Property Taxes attributable to Lessee's use or occupancy of the Premises pursuant to Section 3.8, the Deposit, or any balance remaining, shall be returned to Lessee within thirty (30) days. In the event of any sale or other transfer of the Port's interest in the Premises, the Port may transfer the Deposit to the purchaser and the Port shall have no further liability to refund the Deposit.



### **3.6 Rent Payments**

#### **3.6.1 Rent Due Date**

Beginning on the Commencement Date, Lessee shall pay Rent, in advance, on or before the first day of each calendar month ("Rent Due Date") except that Rent for the first month shall be paid upon execution of this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month, Rent for that partial calendar month shall be prorated based on the number of days remaining in the month.

#### **3.6.2 No Offset**

Payment of Rent and other amounts due under this Lease shall be made without offset, abatement or deduction, to the Port at the following address or such other place as the Port may designate:

The Port of Portland  
Unit 27  
P.O. Box 4900  
Portland, Oregon 97208-4900

#### **3.6.3 Delinquency Charge**

All Rent not paid when due shall bear a Delinquency Charge of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, whichever is less (the "Delinquency Charge"). Such interest shall be charged from the date due until the Rent and the Delinquency Charge are both paid in full. This Delinquency Charge is subject to periodic change, at the Port's sole discretion. No change shall occur, however, without at least thirty (30) days prior written notice to Lessee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port for failure to timely pay Rent.

#### **3.7 Acceptance of Rent**

The Port's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default (as hereinafter defined) nor shall it prevent the Port from exercising any of its other rights and remedies granted to the Port under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal effect. Lessee shall remain in default and obligated to pay all Rent due even if the Port has accepted a partial or late payment of Rent.

#### **3.8 Real Property Tax**

"Real Property Taxes" means all taxes and assessments of any public authority against the Building or the Premises and the real property on which it is located, including any common areas, and any other tax or charge levied wholly or partly in lieu thereof because of occupancy of the building, and the cost of contesting the same. Lessee shall pay Lessee's Proportionate Share of Real Property Taxes attributable to the Premises as a part of Lessee's Operating Charge. If any portion of the Building is occupied by a tax-exempt tenant so that the Building has a partial tax exemption under Oregon law, then, Real Property Taxes shall be calculated taking that exemption into account. If a separate assessment or tax increase arises because of Lessee's

improvements to the Premises, then Lessee shall pay one hundred percent (100%) of such assessment or tax increase. Notwithstanding that Real Property Taxes will be paid to the Port on a monthly basis as part of the Operating Charge, If Lessee occupies the Premises after July 1 of any calendar year, Lessee shall pay all the Real Property Taxes attributable to the Premises for the entire tax year (currently July 1 - June 30).

### **3.9 Other Taxes**

Lessee shall pay when due, all taxes and fees assessed against and levied against Lessee's fixtures, equipment, furnishings and personal property located in or on the Premises or elsewhere in the Building or Common Areas.

## **4. LESSEE'S OTHER OBLIGATIONS**

### **4.1 Construction of Improvements**

#### **4.1.1 Port Approval**

Lessee shall undertake no construction, alteration, or changes ("Work"), including any required for additional utilities desired by Lessee, on or to the Premises without the prior written consent of the Port. The Port may require Lessee to submit to the Port for approval any of the following: the name of the proposed contractor; final plans and specifications; a site-use plan; and architectural renderings. Approval must be obtained prior to application for any building or similar permit. The Port may condition its approval on Lessee's obtaining and delivering to the Port a performance bond and a labor and materials payment bond (issued by a corporate surety satisfactory to the Port and licensed to do business in Oregon), each in an amount equal to the estimated cost of the construction and in a form satisfactory to the Port. All improvements installed on the Premises by Lessee shall be the property of Lessee until termination of this Lease. Upon termination, however, such Improvements shall be deemed a part of the Premises, at the option of the Port, as more specifically provided in Section 9. "Improvements" shall mean all improvements made to and affixed to the Premises by either the Port or by Lessee.

#### **4.1.2 Permits and Licenses**

No Work may commence until Lessee obtains and delivers to the Port copies of all necessary governmental permits and licenses.

#### **4.1.3 Other Requirements**

All Work shall be performed in a good and workmanlike manner and in conformance with applicable Port Rules and all permit requirements. All Work shall be done with reasonable dispatch. If requested by the Port, within thirty (30) days after the completion of any Work covered by this Section 4, Lessee shall deliver to the Port complete and fully detailed as-built drawings of the completed Work, prepared by an architect or engineer licensed by the State of Oregon.

### **4.2 Maintenance**

Except for those responsibilities which are specifically designated as the responsibility of the Port in Section 5.4, Lessee shall keep and maintain the Premises and all Improvements in a



clean, orderly and safe condition, and shall be liable for any damage to the Premises because of Lessee's behavior or actions. Lessee shall comply with all applicable manufacturer's recommended maintenance standards for all systems, and equipment located within the Premises, and, whether or not such manufacturer's standards exist, shall take appropriate preventative maintenance actions so as to maximize their useful lives.

#### **4.3 No Liens**

Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent to the Premises other than any such sums related to the construction of the Improvements by the Port. If any lien is filed against the Premises which Lessee wishes to protest, then Lessee shall immediately deposit cash with the Port, or procure a bond acceptable to the Port, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish the cash or bond acceptable to the Port within ten (10) days shall constitute an Event of Default under this Lease and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse the Port for any sums so paid to remove any such lien. Lessee shall not encumber the Premises or any Improvements thereon without prior written approval of the Port.

#### **4.4 Utilities and Services**

The following utilities are included in the Operating Charge and provided by the Port: Electrical, gas, sanitary sewer and water. Lessee must make arrangement for any other utilities and shall promptly pay such other utility charges before delinquent. Interruption of services or utilities shall not be deemed an eviction or disturbance of Lessee's use and possession of the Premises, render the Port liable to Lessee for damages, or relieve Lessee from performance of Lessee's obligations under this Lease, including full payment of all Rent due.

#### **4.5 Signs**

Lessee shall not erect, install, nor permit upon the Premises any sign or other advertising device without first having obtained the Port's written consent, which the Port may withhold in its sole discretion. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless the Port elects to retain all or any portion of the signage.

#### **4.6 Port Access to Premises**

The Port shall have the right to enter upon the Premises for the purposes of: (i) Confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which the Port may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made on reasonable advance notice and during normal business hours, where practical, except in cases of emergency or a suspected violation of this Lease or the law. Lessee waives any claim against the Port for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry except to the extent caused by the gross negligence or willful misconduct of the Port. The Port shall, at all times, retain a key with which to unlock all doors in, upon or about the Premises, and the Port shall have the right to use any and all means



which the Port may deem reasonable to open such doors in an emergency in order to obtain entry into the Premises.

#### **4.7 Safety Requirements**

Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for Lessee in any way connected with the conduct of Lessee pursuant to this Lease.

Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and, to that end, shall provide and maintain fire extinguishers pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises. The Port shall maintain the existing fire suppression sprinkler system in the Building and fire extinguishers in the Common Areas.

### **5. PORT AUTHORITY AND OBLIGATIONS**

#### **5.1 Delivery of Premises**

Lessee shall have the right to possession of the Premises as of the Commencement Date of this Lease. Delayed possession shall not advance the Expiration Date of this Lease. The Port shall have no liability to Lessee for any delay in delivering possession other than to pro-rate Rent accordingly.

#### **5.2 Quiet Enjoyment**

Subject to Lessee performing all of Lessee's obligations under this Lease and subject to the Port's rights of condemnation under Oregon law, Lessee's possession of the Premises will otherwise not be disturbed by the Port.

#### **5.3 Condition of Premises**

The Port makes no warranties or representations regarding the condition of the Premises, including, without limitation, the suitability of the Premises for Lessee's intended uses. Lessee has inspected and accepts the Premises in "AS IS" condition upon taking possession. The Port shall have no liability to Lessee, and Lessee shall have no claim against the Port, for any damage or injury caused by the condition of the Premises. Unless otherwise agreed to in writing by the Port, the Port shall have no responsibility to bring the Premises into compliance with the Americans With Disabilities Act (ADA).

#### **5.4 Port Maintenance and Repair Obligation**

The Port shall be responsible for the repair and maintenance of the Building interior and exterior, the roof, utilities including in the Operating Charge as defined in Section 3.3, sprinkler system, Common Areas, and the HVAC system. Except as stated herein, the Port shall have no other maintenance or repair responsibilities of any nature whatsoever. The Port shall have no liability for interference with Lessee's use which might result from the Port's repair and maintenance efforts and no such efforts shall be construed as a constructive eviction or other



eviction of Lessee. Rent shall not be reduced during any such repair period. Notwithstanding the foregoing, any repair of damage caused by negligence or breach of this lease by Lessee, Lessee's subtenants, employees, agents, contractors or invitees, shall be Lessee's responsibility and shall be done at Lessee's sole expense.

## **5.5 Port's Right to Relocate**

### **5.5.1 Port's Obligation to Operate Port Properties**

Lessee acknowledges the Port's responsibility to the public to prudently operate, maintain and develop the Port's facilities. In executing this responsibility, the Port shall have the right to undertake developments, renewals, replacements and maintenance which the Port, in its sole discretion, deems prudent or necessary. Such right shall include the right of the Port to relocate Lessee, reduce the Premises, or otherwise provide for the termination of Lessee's rights under this Lease in the event that Lessee's possession of the Premises conflicts with proposed Port developments, renewals, replacements, use of or maintenance of Terminal 2.

### **5.5.2 Terms of Relocation**

The Port's rights to relocate Lessee, reduce the Premises' size or terminate Lessee's rights to possess the Premises absent a default by Lessee and except as otherwise provided by this Lease, shall be subject to and in accordance with Lessee's statutory relocation rights, if any.

## **5.6 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: To adjust the boundaries of, expand or delete Common Areas and correspondingly adjust the Operating Charge; to change Port Rules for the use of the Common Areas; to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has ingress and egress to the Premises); to construct additional buildings or other improvements in the Common Areas; to evict anyone from the Common Areas who fails to comply with any applicable laws including applicable Port Ordinances and/or Port Rules.

## **6. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **6.1 Definitions**

For the purposes of this Lease, the following definitions shall apply:

#### **6.1.1 Environmental Law**

"Environmental Law" shall be interpreted in the broadest sense to include any and all federal, State of Oregon and local laws, regulations, rules, permit terms, codes and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which in any way govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment.

#### **6.1.2 Hazardous Substance**

"Hazardous Substance" shall be interpreted in the broadest sense to include any and all substances, emissions, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum-derived products.

#### **6.1.3 Environmental Cost**

"Environmental Cost" shall be interpreted in the broadest sense to include, but not be limited to, costs and damages arising from or relating to: (i) any actual or claimed violation of or noncompliance with any Environmental Law; (ii) claims for damages, response costs, fines, fees or other relief relating to matters addressed in any Environmental Law; (iii) injunctive relief relating to matters addressed in any Environmental Law; (iv) Hazardous Substance Releases (as defined in Section 6.1.4); and (v) violations of any environmental provisions of this Lease. Costs and damages as used in this Section shall include but not be limited to: (a) costs of evaluation, testing, analysis, cleanup, remediation, removal, disposal, monitoring and maintenance; (b) costs of reporting to or negotiating with any government agency; (c) fees of attorneys, engineers, consultants, and experts, whether or not taxable as costs, incurred at, before or after trial, appeal or administrative proceedings; (d) lost revenue; and (e) diminution of value, loss, or restriction on use of property.

#### **6.1.4 Hazardous Substance Release**

"Hazardous Substance Release" shall be interpreted in the broadest sense to include the spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking or placing of any Hazardous Substance into the air or into or on any land or waters, except as authorized by a then-current and valid permit issued under applicable Environmental Law.

#### **6.2 General Environmental Obligations of Lessee**

Lessee shall manage and conduct all of its activities on or relating to the Premises in compliance with all applicable environmental laws and regulations and the environmental provisions of this Lease.

#### **6.3 Use of Hazardous Substances**

Lessee shall be permitted to only use, handle or store, for their intended purposes in accordance with all manufacturers' instructions, Hazardous Substances consisting of small quantities of ordinary janitorial, office and landscaping supplies available at retail. Lessee must obtain the Port's prior written approval to bring any other hazardous substances onto the Premises.

#### **6.4 Lessee's Liability**

##### **6.4.1 Hazardous Substance Releases**

Lessee shall be liable for any Hazardous Substance Release which occurs during the Lease Term on the Premises. Lessee shall also be responsible for any Hazardous Substance Release on the Premises, or on other properties or in the air or in adjacent or nearby waterways (including groundwater) which results of or in connection with Lessee's occupancy or use of the



Premises which occurs during the Lease Term or which occurs or continues after the Lease Term.

#### **6.4.2 Lessee's Liability for Environmental Cost**

Lessee shall be liable for all Environmental Cost arising under this Lease. Any Environmental Cost for which Lessee is obligated under this Lease shall be paid by Lessee within thirty (30) days after the date of written notice or invoice from the Port or from the agency assessing such Environmental Cost directly against Lessee. Any Environmental Cost not paid when due shall bear interest at the Delinquency Rate from the date due until paid in full.

#### **6.5 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Lessee, to inspect the Premises concerning environmental compliance.

#### **6.6 Environmental Response and Notice**

In the event of an environmental incident of any kind, Lessee shall be responsible for all necessary response and shall promptly notify the Port of the incident and the response. If notice must be given on the weekend or after 5:00 p.m. on any day, Lessee shall notify the Port by calling the Port's emergency telephone number. That number currently is (503) 240-2230.

#### **6.7 Lessee's Records**

Lessee shall maintain for the duration of the Lease Term, Material Safety Data Sheets (MSDS) for all Hazardous Substances used or stored on the Premises in a place known to and accessible to the Port.

### **7. INDEMNITY, INSURANCE**

#### **7.1 General Indemnity; Reimbursement for Damage**

Lessee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against any and all claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, Environmental Costs and/or penalties (collectively "Costs") which may be imposed upon or claimed against or incurred or suffered by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's negligence or willful misconduct: (a) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors resulting in damages or loss to a third party; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by Lessee, including any accident, injury or damage occurring on or about the Premises resulting from such condition; (d) any breach, violation or nonperformance of any of Lessee's obligations under this Agreement; or (e) any damage caused by Lessee on or to the Premises. For purposes of this Section, "Lessee" shall be deemed to include Lessee and all of Lessee's respective partners, officers, directors, agents, employees, invitees, licensees, and/or contractors

## **7.2 Insurance Requirements**

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage the Port is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

### **7.2.1 Certificates; Notice of Cancellation**

On or before the Effective Date, and thereafter during the Lease Term, Lessee shall provide the Port with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance policies required under this Section. No insurance policy may be canceled, materially revised, or allowed to expire without at least thirty (30) days prior written notice being given to the Port. Insurance must be maintained without any lapse in coverage during the Lease Term. The Port shall also be given certified copies of Lessee's policies of insurance, upon request. Failure of the Port to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the Port to identify a deficiency from evidence that is provided, shall not be construed as a waiver of Lessee's obligation to maintain the insurance required by this Lease.

### **7.2.2 Additional Insured; Separation of Insureds**

The Port shall be named as an additional insured in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage as provided under a standard Separation of Insureds clause published by the Insurance Services Office ("ISO"), or a successor organization.

### **7.2.3 Primary Coverage**

The required policies shall provide that the coverage is primary, and will not seek any contribution from any insurance or self-insurance carried by the Port.

### **7.2.4 Company Ratings**

All policies of insurance must be written by companies having an A.M. Best rating of "A-" or better, or equivalent. The Port may, upon thirty (30) days written notice to Lessee, require Lessee to change any carrier whose rating drops below an "A-" rating.

## **7.3 Required Insurance**

At all times during the Lease Term, Lessee shall provide and maintain the following types of coverage:

### **7.3.1 Liability Insurance**

Lessee shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Premises or occasioned by reason of the operations of Lessee. Such coverage shall be written on an ISO



occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Lessee shall maintain fire legal liability insurance in an amount equal to ONE HUNDRED THOUSAND DOLLARS (\$100,000) per occurrence.

#### **7.3.2 Automobile Liability Insurance**

In the event that automobiles are used in connection with Lessee's business or operations at the Premises, Lessee shall maintain an automobile liability policy or policies insuring against liability for bodily injury, death, or damage to property and relating to the use, loading or unloading of any of Lessee's automobiles (including owned, hired and non-owned vehicles) on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) each accident.

#### **7.3.3 Workers' Compensation Insurance**

In accordance with Oregon law and the Longshore and Harbor Workers' Compensation Act, Lessee shall maintain in force workers' compensation insurance for all of Lessee's employees, including coverage for U.S. Longshore & Harbor Workers' Act claims, if applicable. Lessee shall also maintain employer's liability coverage in an amount of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per accident and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per employee for disease. In lieu of such insurance, Lessee may maintain a self-insurance program meeting the requirements of the State of Oregon (and the U.S. Department of Labor, if applicable) and a policy of excess workers' compensation and employer's liability insurance.

#### **7.4 Lessee's Risks**

Lessee shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (i) business interruption, such as gross earnings, extra expense, or similar coverage; (ii) personal property; and/or (iii) automobile physical damage and/or theft. In no event shall the Port be liable for any (a) business interruption or other consequential loss sustained by Lessee; (b) damage to, or loss of, personal property; or (c) damage to, or loss of, an automobile, whether or not such loss is insured.

#### **7.5 Waiver of Subrogation**

If any of Lessee's property or automobile insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to loss, Lessee shall cause it to be endorsed with a waiver of subrogation that allows the waivers required by this Section. Lessee and the Port waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Premises for any loss, cost, damage or expense (collectively, "Loss") to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Lessee waives any right of action it and/or its insurance carrier might have against the Port (including its respective employees, officers, commissioners, or agents) for any Loss to the extent such Loss is covered under any applicable automobile liability policy or policies required by this Lease.



Lessee also waives any right of action it and/or its insurance carrier might have against the Port (including its employees, officers, commissioners or agents) for any Loss expressed in Section 7.4, whether or not such Loss is insured.

#### **7.6 Periodic Review**

The Port shall have the right to periodically review the types, limits and terms of insurance coverage. In the event the Port reasonably determines that such types, limits, and/or terms should be changed, the Port will give Lessee a minimum of thirty (30) days notice of such determination and Lessee shall modify its coverage to comply with the new insurance requirements of the Port. Lessee shall also provide the Port with proof of such compliance by giving the Port an updated certificate of insurance within fifteen (15) days.

#### **7.7 Survival of Indemnity**

The indemnity set forth in Section 7.1 shall survive the expiration or earlier termination of the Lease and be fully enforceable thereafter.

### **8. DAMAGE OR DESTRUCTION**

#### **8.1 General**

In the event the Building or any other Improvements are partially or completely destroyed, and Lessee is unable to continue use of the Premises, the Port shall be under no obligation to repair and reconstruct the Building and/or such other Improvements, and the Port or Lessee may terminate this Lease.

#### **8.2 Port Reconstruction**

If the Port elects to restore the Building or the Premises, and/or such other Improvements, the Port's obligations shall be limited to the repair or reconstruction of the Building or the Premises and/or such other Improvements to substantially the same condition as when delivered to Lessee. Lessee shall be responsible for replacement of Lessee's own Improvements, furniture, equipment, and supplies. No damages, compensation or claim shall be payable to Lessee by the Port for business interruption arising from any repair or restoration of the Premises or of the Building. The Port shall not be required to do any such repair or restoration work except during business hours of business days but will proceed to restore the Building with reasonable diligence. The Port shall not be obligated to insure or protect against loss by fire or other casualty to the contents of the Premises, and shall not be obligated to repair any damage to or replace any Improvements paid for by Lessee or any of Lessee's equipment, inventory or personal property. Lessee is responsible for maintaining insurance coverage for all personal property located in the Premises, including Lessee's trade fixtures.

#### **8.3 Rent Reduction**

Rent payments payable under this Lease shall be proportionately paid up to the time of such damage or destruction and shall then abate proportionately to the area of the Premises rendered unusable until such time as the Premises may be fully restored. However, if the Premises are damaged, destroyed or rendered untenable as a result of the negligent act or omission of Lessee, Rent shall not abate and the Port may, in its discretion, require Lessee to repair and reconstruct such Premises and pay the costs of repair in excess of insurance proceeds



recovered therefor; or, if Lessee fails or refuses to complete such reconstruction, the Port may itself choose to repair and reconstruct such Premises and Lessee shall be responsible for reimbursing the Port for the costs and expenses incurred in such repair in excess of insurance proceeds recovered therefor.

## **9. TERMINATION**

### **9.1 Termination by Either Party**

The Port shall be entitled to terminate this Lease, or possession of the Premises under this Lease, as provided herein and as otherwise provided by law.

### **9.2 Duties on Termination**

Upon termination of the Lease for any reason, Lessee shall deliver all keys, including those for the mailbox, to the Port and surrender the Premises and all Improvements in good clean condition. All Improvements on the Premises, whether constructed by the Port or by Lessee, shall, at the Port's option, become Port property and shall not be removed unless the Port directs Lessee to remove such Improvements, in which case Lessee must promptly remove the Improvements and then repair any damage to the Premises. All repair for which Lessee is responsible shall be completed prior to termination and surrender.

### **9.3 Lessee's Personal Property**

#### **9.3.1 Removal Requirement**

Furniture, decorations, detached floor covering, curtains, blinds, furnishings and removable trade fixtures shall remain the property of Lessee if placed on the Premises by Lessee at Lessee's expense, and shall remain the property of Lessee upon termination of this Lease if Lessee is not in default at the time of termination of the Lease, and if they are removed from the Premises no later than fourteen days after termination. Lessee shall remove its trade fixtures, signs, and personal property in a manner and at times that do not interrupt operation of the Port facilities. Lessee shall repair all damage done to the Premises or other Port-owned property resulting from the removal of such trade fixtures, signs, and personal property and shall restore the Premises and other Port-owned property to the state of good repair that existed prior to the installation of Lessee's trade fixtures, signs, and personal property, less normal wear and tear. Title to any items of Lessee's trade fixtures and other personal property which remain on the Premises beyond the time allowed in this Section may, at the option of the Port, be automatically taken by the Port, and the Port shall have the option, in its sole discretion, of: (a) retaining any or all of such trade fixtures and other personal property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such trade fixtures and other personal property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

#### **9.3.2 Time for Removal**

The time for removal of any property which Lessee is required to remove from the Premises upon termination shall be as follows: (a) within thirty (30) days after notice from the Port requiring such removal where the property to be removed is an Improvement which Lessee is not required to remove except after election or notice by the Port; or (b) if this Lease is



terminated unexpectedly due to a casualty loss, condemnation, an uncured Event of Default or for any other reason prior to the Expiration Date, then all removal must occur within thirty (30) days of the actual termination date and Lessee must continue to pay all Rent during that period.

#### **9.4 Holding Over**

If Lessee holds over after the expiration or earlier termination of this Lease, and the Port and Lessee have not otherwise agreed in writing upon the terms and provisions of such holding over, Lessee shall be deemed by the Port to be either a month-to-month holdover tenant or a tenant at sufferance and Lessee shall remain bound by all terms, covenants, and agreements hereof. If Lessee is deemed to be a holdover tenant, Lessee and the Port agree that: (i) the tenancy shall be from month-to-month and may be terminated at any time by thirty (30) days prior written notice from either party to the other; (ii) title to any Improvements shall, at the Port's option and in accordance with Section 9.2, vest in the Port as of the date of termination or expiration; and (iii) Rent shall be at one-hundred and fifty (150) percent of the current Rent. In the event that the Port deems Lessee a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the Port may take immediate action to evict Lessee without notice and may otherwise exercise any other rights and remedies available to it at law or in equity for breach of this Lease. In the event that Lessee is a holdover tenant or a tenant at sufferance beyond June 30 of any year, Lessee shall be responsible for payment of property taxes for the entire following tax year without proration.

### **10. DEFAULT**

#### **10.1 Event of Default**

The occurrence of any of the following shall constitute an Event of Default":

##### **10.1.1 Default in Rent**

Failure of Lessee to pay any Rent or other amount payable to the Port or to others as provided in this Lease within ten (10) days of the date such payment is due. No notice by the Port that Rent or such other amount is past due shall be required.

##### **10.1.2 Default in Other Covenants**

Failure of Lessee to comply with any term, covenant or condition of this Lease (other than the payment of Rent or other amounts) within thirty (30) days after written notice by the Port describing the nature of the default. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds in good faith and with reasonable diligence to effect the cure as soon as practical, so long as done to the satisfaction of the Port. Notwithstanding the foregoing, the Port need not give notice for a similar type of default more than twice during the Lease Term, and a failure to perform such type of obligation after the second notice constitutes an Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any Event of Default threatens to cause serious harm to the Port or other tenants or persons, then the Port shall not be required to serve any notice before proceeding to request immediate injunctive relief.



### **10.1.3 Insolvency**

The insolvency of Lessee shall be an Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Lease, "Insolvency" shall, to the extent permitted by the United States Bankruptcy Code, be deemed to include an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee and the receiver is not discharged within thirty (30) days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within thirty (30) days.

### **10.1.4 Abandonment**

Failure of Lessee for thirty (30) days or more to use and occupy the Premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease shall be considered "Abandonment." No notice that an Event of Default has occurred shall be required from the Port.

## **10.2 Remedies on Default**

Upon the occurrence of an Event of Default, the Port at its option may terminate the Lease or terminate Lessee's right to possession of the Premises and at any time may exercise any other remedies available under law or equity for such Event of Default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. Without limiting the foregoing, upon the occurrence of an Event of Default, the Port may exercise any or all of the following remedies:

### **10.2.1 Re-entry**

The Port may re-enter the Premises, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Premises and remove any person or property therefrom, to the end that the Port may have, hold and enjoy the Premises.

### **10.2.2 Rent Recovery**

Whether or not the Port retakes possession of the Premises, the Port shall have the right to recover unpaid Rents and all damages caused by the default. Damages shall include, without limitation: all Rents lost; all legal expenses and other related costs incurred by the Port as a result of Lessee's default; that portion of any leasing commission paid by the Port as a result of this Lease which can be attributed to the unexpired portion of this Lease; all costs incurred by the Port in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting; and all costs incurred by the Port in reletting the Premises, including, without limitation, any brokerage commissions and the value of the Port's staff time expended as a result of the default.

### **10.2.3 Reletting**

The Port, at its option may relet the whole or any part of the Premises from time to time, either in the name of the Port or otherwise, to such tenants, for such terms ending before,



on or after the expiration date of the Lease Term, at such rent and upon such conditions (including concessions and free rent periods) as the Port, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, the Port shall not be liable for refusal to relet the Premises, or, in the event of any such reletting, for failure to collect any rent due upon such reletting; and no such failure shall operate to relieve the Lessee of any liability under this Lease or otherwise affect any such liability. The Port may make such physical changes to the Premises as the Port, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. If there is other unleased space in the Building or in other Port owned buildings, the Port shall have no obligation to attempt to relet the Premises prior to leasing such other space. In no event shall the Port be required to attempt to relet the Premises to a potential lessee with whom the Port has been negotiating a lease for other space owned by the Port or to whom the Port has shown other space owned by the Port. The Port shall be entitled to use its best efforts to lease such other Port space to such prospective tenant.

#### **10.2.4 Recovery of Damages**

The Port may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. The Port may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rents reserved in this Lease (including an estimated amount of Operating Charge as determined by the Port) for the balance of the Lease Term after a judgment and any such action or suit, and the fair rental value of the Premises for the same period. If the Port has relet all or any part of the Premises for the period which otherwise would have constituted all or any part of the unexpired portion of the Lease Term, the amount of rent established upon such reletting shall be deemed, prima facie, to be the fair rental value for the part or whole of the Premises so relet during the term of the reletting.

#### **10.3 Remedies Cumulative and Nonexclusive**

Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### **10.4 Termination**

Even though Lessee has breached this Lease, this Lease shall continue for so long as the Port does not terminate Lessee's right to possession, and the Port may enforce all of its rights and remedies under this Lease, including the right to recover the Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of the Port to protect the Port's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by the Port to Lessee. Any notice to terminate may be given before or within the cure period for default and may be included in a notice of failure of compliance. No such termination



shall prejudice the Port's right to claims for damages for such breach or any other rights and remedies of the Port.

#### **10.5 Curing Lessee's Defaults**

If Lessee shall default in the performance of any of Lessee's obligations under this Lease, the Port, without waiving such default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such default continues after the expiration of thirty (30) days from the date the Port gives Lessee notice of the default. The Port shall not be liable to Lessee for any claim for damages resulting from such action by the Port. Lessee agrees to reimburse the Port upon demand, as Additional Rent, any amounts the Port may spend in complying with the terms of this Lease on behalf of Lessee. The Port shall have the same rights and remedies in the event of the nonpayment of sums due to be reimbursed under this Section as in the case of default by Lessee in the payment of any other Rent. Any sums to be so reimbursed shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less.

#### **10.6 Default by Port**

In the event of any default by the Port, Lessee's exclusive remedy shall be an action for damages. Prior to being entitled to maintain any such action, Lessee shall give the Port written notice specifying such default with particularity, and the Port shall have thirty (30) days within which to cure any such default, or if such default cannot reasonably be cured within thirty (30) days, the Port shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until the Port fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Port hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Port only during the period of its ownership of the Premises and not thereafter, subject to Section 11.3 below.

### **11. ASSIGNMENT, SUBLEASE AND TRANSFER**

#### **11.1 Prohibition**

This Lease is personal to Lessee. Therefore, unless otherwise provided in this Lease, no part of the Premises, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means, without the prior written consent of the Port. Whether to deny or grant any such request shall be in the Port's sole discretion. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law. If Lessee is a corporation or other entity, change in ownership of the controlling interest in the stock of the corporation or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed an assignment of this Lease requiring the Port's consent.



### **11.2 Effect of Consent**

No assignment or subletting by Lessee shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is given by the Port. Any consent by the Port to a particular assignment or sublease shall not constitute the Port's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the signed assignment or sublease document to the Port promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that the Port have the right to enforce such terms and conditions directly against such assignee or subtenant.

### **11.3 Transfer by the Port**

At any time after the Effective Date of this Lease, the Port shall have the right to transfer its interest in the Premises or in this Lease. In the event of such a transfer, the Lessee shall attorn to said transferee and recognize transferee as the new Lessor under the Lease. Thereafter, the Port shall be relieved, upon notification to Lessee of the name and address of the Port's successor, of any obligations accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations of the Port under this Lease.

### **11.4 Estoppel Certificates**

Lessee agrees to execute and deliver to the Port, at any time and within ten (10) days after written request, a statement certifying: (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (b) the dates to which Rent has been paid; (c) whether or not the Port is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (d) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the Port and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as the Port reasonably requests. The parties agree that any statement delivered pursuant to this section shall be deemed a representation and warranty by Lessee which may be relied upon by the Port and by potential or actual purchasers and lenders with whom the Port may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten (10) days after the Port's written request therefor, Lessee shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement.

## **12. GENERAL PROVISIONS**

### **12.1 Covenants, Conditions, and Restrictions**

This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon the Premises and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of the Port, execute and deliver agreements of subordination in the form requested by the Port.



## **12.2 Governing Law**

This Lease shall be governed and construed according to the laws of the State of Oregon.

## **12.3 No Benefit to Third Parties**

The Port and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

## **12.4 Port Consent**

If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if the Port has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and the Port has, in fact, acted unreasonably in either of those instances.

## **12.5 No Implied Warranty**

In no event shall any consent, approval, acquiescence, or authorization by the Port be deemed a warranty, representation, or covenant by the Port that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall the Port be deemed liable therefor. Lessee shall be solely responsible for such matters.

## **12.6 Notices**

All general correspondence with the Port may be sent to:

The Port Of Portland  
Post Office Box 3529  
Portland, Oregon 97208  
Attn: Marine Contracts Administrator

All notices required or desired to be given under this Agreement shall be in writing and may be delivered by personal delivery or by placement in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

The Port Of Portland  
121 NW Everett  
Portland, Oregon 97209  
Attn: Marine Contracts Administrator

and to Lessee at:

Alexander Gow, Inc.  
3556 NW Front Avenue  
Portland, OR 97210  
Attn: Capt. Peter Singh

Any notice delivered by personal delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by mail as set forth in this Agreement shall be conclusively deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision.

#### **12.7 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

#### **12.8 Nonwaiver**

Waiver by the Port of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice the Port's right to require strict performance of the same provision in the future or of any other provision.

#### **12.9 Survival**

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

#### **12.10 Partial Invalidity**

If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **12.11 No Light or Air Easement**

The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of the Port to Lessee.

#### **12.12 Lease Subject to Bonds and Ordinances**

This Lease shall be subject and subordinate to the bonds and ordinances which create liens and encumbrances as are now on the land which constitutes the Premises. Lessee agrees that the Port may hereafter adopt such bond ordinances which impose liens or encumbrances on said land and the Port's interest in the leasehold, and that Lessee shall, upon request of the Port, execute and deliver agreements of subordination consistent herewith.



#### **12.13 Limitation on Port Liability**

The Port shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party including other tenants. The Port shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. The Port shall not be liable for the consequence of admitting by passkey or refusing to admit to the Premises, Lessee or any of Lessee's agents or employees or other persons claiming the right of admittance.

#### **12.14 Security**

The Port is not responsible for security to the Premises, Building or the Common Areas.

#### **12.15 Headings**

The article and section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

#### **12.16 Exhibits Incorporated by Reference**

All Exhibits attached to this Lease are incorporated by reference in this Lease for all purposes.

#### **12.17 Modification**

This Lease may not be modified except by a writing signed by the parties hereto.

#### **12.18 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Lease requires Lessee to defend the Port, it is agreed that such defense shall be by legal counsel acceptable to the Port.

#### **12.19 Entire Agreement**

This Lease represents the entire agreement between the Port and Lessee relating to Lessee's leasing of the Premises and shall supersede all previous communications, representations, or agreements, whether verbal or written between the parties hereto with respect to such leasing. It is understood and agreed by Lessee that neither the Port nor the Port's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the Port for, and the Port shall not be liable by reason of, the claimed breach of any representations or promises not

expressly stated in this Lease, any other oral agreement with the Port being expressly waived by Lessee.

**12.20 Successors**

The rights, liabilities and remedies provided for in this Lease shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, successors and assigns of the parties hereto. The words "Port" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

**12.21 Joint and Several Obligations**

If Lessee consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

**12.22 Execution of Multiple Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

**12.23 Defined Terms**

Capitalized Terms shall have the meanings given them in the text of this Lease.

**12.24 No Limit on Port's Powers**

Nothing in this Lease shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers in any way, including such as may affect the Port, the Premises, or any other area under the jurisdiction of the Port, and including the Port's powers of eminent domain.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the year and date first above.

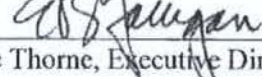
LESSEE

LESSOR

ALEXANDER GOW, INC.

THE PORT OF PORTLAND

By:   
Capt. Peter Singh

By:   
for Mike Thorne, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

By:   
Counsel for Port of Portland

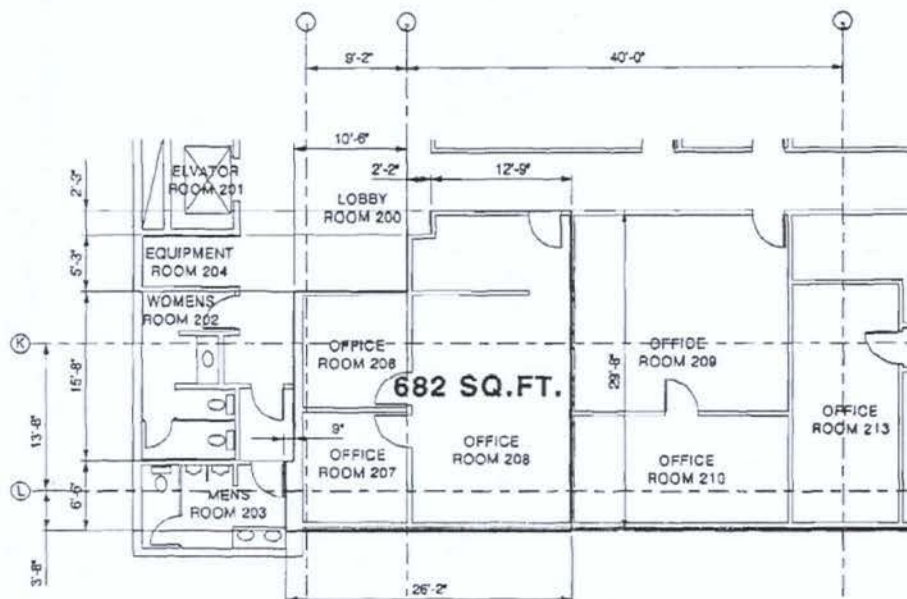


EXHIBIT A

THE PREMISES

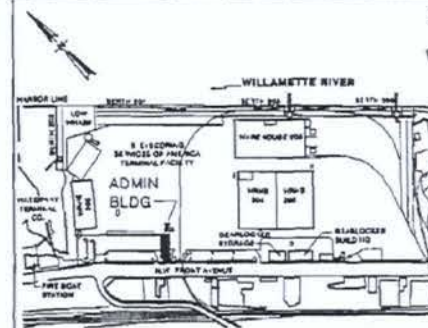
A Revised Lease Plat to  
be attached

fm



SECOND FLOOR  
ADMINISTRATION BLDG  
SCALE: 1/16" = 1'-0"

1  
LP



VICINITY MAP  
SCALE: N.T.S.

2  
LP

ALEXANDER GOW, INC.

| NO. | DATE | BY | REVISIONS | DCD | APP'D |
|-----|------|----|-----------|-----|-------|
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PORT OF PORTLAND  
PORTLAND, OREGON

PROP. & DEVELOP. SERV. WGR

51407

PROJECT NUMBER

DESIGNED BY F. MALLOY

DRAWN BY G. ROSE

CHECKED BY F. MALLOY

DATE APR 1997

SCALE 1/16" = 1'-0"

TERMINAL 2

LEASE PLAT

GULF & ATLANTIC MARITIME SERVICES, INC.

SUBMITTED BY

DRAWING NO.

T2 1/1 (LP)

MANAGER, CAD/DRAWING

POPT2100615



## AMENDMENT NO. 1 TO OFFICE LEASE

THIS AMENDMENT NO. 1 TO OFFICE LEASE (this "First Amendment") is made and entered into effective as of July 1, 2004 ("Effective Date") by and between the PORT OF PORTLAND (the "Port"), a port district of the state of Oregon, and ALEXANDER GOW, INC., a corporation duly organized under the laws of the State of Washington ("Lessee").

### RECITALS

A. The Port is the lessor and Lessee is the lessee under that certain Office Lease dated December 1, 1999 for certain real property and improvements located at 3556 NW Front Avenue, in the Port's Terminal 2 Administration Building (Port Agreement No. 1999-257) (the "Lease").

B. The Port and Lessee desire to amend the Lease to modify the square footage of the Premises and add to the Premises additional space to be used as storage space.

C. The Port and Lessee further desire to amend the Lease to adjust the Expiration Date, to modify the annual Rent and the Adjustments to Rent, and to delete the Operating Charge.

NOW THEREFORE the parties, in consideration of the foregoing Recitals and the mutual covenants and conditions set forth below, agree as follows:

### 1. DESCRIPTION OF PROPERTY

Exhibit A of the Lease shall be replaced with the attached Exhibit A-1. Section 1.1 of the Lease shall be deleted in its entirety and replaced with the following new Section 1.1:

#### 1.1 Agreement to Lease and Description of Property

The Port leases to Lessee and Lessee leases from the Port approximately 664 square feet of office space identified as Suite 350 ("Area 1") and approximately 73 square feet of storage space ("Area 2"), all located on the third floor of the Terminal 2 Administration Building (the "Building") at 3556 NW Front Avenue, Portland, Oregon, as shown on the Lease Plat attached to this Lease as Exhibit A-1 (collectively, Area 1 and Area 2 are the "Premises").

### 2. PERMITTED USE

Section 1.2.1 of the Lease shall be deleted in its entirety and replaced with the following new Section 1.2.1:

#### 1.2.1 Permitted Use

Lessee may use Area 1 for general office use only. Lessee may use Area 2 for storage only. No other use may be made of the Premises without the prior written consent of the Port.

### 3. TERM

Section 2.1 of the Lease shall be deleted in its entirety and replaced with the following new Section 2.1:

## **2.1 Term**

The term of this Lease ("Term") for Area 1 shall commence on December 1, 1999 (the "Commencement Date") and expire November 30, 2002 (the "Expiration Date") unless sooner terminated pursuant to the terms of this Lease. The term of this Lease with respect to Area 2 shall commence on July 1, 2004, shall continue on a month-to-month basis thereafter, and shall expire on the Expiration Date, unless earlier terminated as provided in this Lease. Either party may terminate this Lease with respect to Area 2 at any time upon thirty (30) days advance written notice.

## **4. OPTIONS TO EXTEND**

Section 2.2 of the Lease is hereby deleted in its entirety and replaced with the following:

Upon mutual agreement of the parties, Lessee shall have options (each an "Extension Option") to extend this Lease for two (2) successive terms (each an Extension Term). The first such Extension Term shall be for a term of three (3) years ending on November 30, 2005, unless sooner terminated pursuant to the terms of this Lease. The second Extension Term shall be for a term of two (2) years and seven (7) months, ending on June 30, 2008, unless sooner terminated pursuant to the terms of this Lease. Notwithstanding the foregoing, no Extension Option shall be effective if any uncured Event of Default (as defined in Section 10) exists under this Lease, either as of the date the Extension Option is exercised or on the date the Extension Term commences. The terms and conditions set forth in this Lease (as the same may be amended from time to time) shall continue during the Extension Term except: (i) Rent, as defined in Section 3.1, shall be adjusted pursuant to Sections 3.2 and 3.3; and (ii) the Port may elect to require amendments to this Lease to incorporate the Port's then-current standard lease provisions. If the Port requires such amendments as a condition of the granting of the Extension Term, the Port shall provide a copy of such amendments to Lessee within thirty (30) days after receipt of Lessee's notice exercising an Extension Option. Lessee shall have thirty (30) days after delivery of the Port's proposed amendments to withdraw Lessee's exercise of the Extension Option by written notice of withdrawal to the Port; otherwise, Lessee shall be deemed to have accepted the Port's proposed amendments.

## **5. RENT**

Section 3.1 of the Lease shall be deleted in its entirety and replaced with the following new Section 3.1:

### **3.1 Rent**

Lessee shall pay an annual Rent to the Port for the use of Area 1 of \$15.00 per square foot per year. Rent for Area 1 is Eight Hundred Thirty Dollars (\$830.00) per month. Lessee shall pay an annual Rent to the Port for the use of Area 2 of \$6.50 per square foot calculated on a per month basis. Rent for Area 2 is Thirty-Nine Dollars and Fifty-Four Cents (\$39.54) per month. Rent for both



Area 1 and Area 2 shall be adjusted during the Lease Term pursuant to Section 3.2.

## **6. ADJUSTMENTS TO RENT**

Section 3.2 of the Lease shall be deleted in its entirety and replaced with the following new Section 3.2:

### **3.2 Adjustments to Rent**

Beginning on July 1, 2004, Rent shall be adjusted annually during the Lease Term and any Extension Term on the anniversary of the Commencement Date (the "Adjustment Date") by the Port's calculation of the percentage change in the "Consumer Price Index - U.S. City Average for all Items for All Urban Consumers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U") two months prior to the Adjustment Date. Such percentage change on any Adjustment Date shall not exceed five percent (5%). In the event that the percentage change in the CPI-U for the relevant period reflects a decrease, the calculation of Rent shall remain unchanged. Lessee acknowledges that adjustments to Rent will be effective and payable as of the Adjustment Date, even though the new rate may not be calculated until some time after the Adjustment Date. Lessee agrees to pay any difference between Rent actually paid to the Port after the Adjustment Date and the total amount due based on the adjustment of Rent within thirty (30) days after the Port's invoice therefor.

## **7. OPERATING CHARGE**

Sections 3.3 and 3.4 shall be deleted in their entirety.

## **8. TAXES**

Section 3.8 shall be deleted in its entirety and replaced with the following new Section 3.8:

### **3.8 Real Property Tax**

"Real Property Taxes" shall mean all taxes and assessments of any public authority against the Building or the Premises and the real property on which it is located, including any Common Areas, and any other tax or charge levied wholly or partly in lieu thereof because of occupancy of the Building, and the cost of contesting the same. The Port shall pay Lessee's Real Property Taxes attributable to the Premises; however, if Lessee occupies the Premises on July 1 of any calendar year, Lessee shall be responsible for paying all real property Taxes attributable to the Premises for the entire tax year (currently July 1 - June 30) even if the Lease expires or terminates prior to June 30 of such calendar year. In the event that the Term of this Lease expires or terminates after the end of any tax year, Lessee, unless exempt, shall be responsible for payment of all real property Taxes for the entire tax year without proration, or, in the event of any change in property tax law, for any taxes due under such law. Lessee agrees that Multnomah County, Oregon, is an intended third party beneficiary of Lessee's obligation, if any, under this Lease to pay real property taxes, and that Multnomah

County may enforce such obligation directly, by an action for a money judgment, without affecting any right or remedy available to the Port under this Lease or otherwise. See the Notice to Tenants attached as Exhibit B.

A new Exhibit B (Notice to Tenants), attached to this First Amendment, is hereby added to the Lease.

## **9. UTILITIES**

The first sentence of Section 4.4 of the Lease shall be deleted in its entirety and replaced with the following new first sentence:

"The following utilities are provided to the Premises at no additional charge: electrical, gas, water, stormwater, and sanitary sewer."

## **10. MAINTENANCE**

The first sentence of Section 5.4 of the Lease shall be deleted in its entirety and replaced with the following new first sentence:

"The Port shall be responsible for the reasonable repair and maintenance of the Building interior (subject to Lessee's obligations under this Lease, including without limitation Section 4.2), the Building exterior, the roof, sprinkler system, Common Areas, including landscaping in the parking lot and adjacent to the Building, and the HVAC system."

## **11. COMMON AREAS**

Section 5.6 shall be deleted in its entirety and replaced with the following new Section 5.6:

### **5.6 Port Authority Over Common Areas**

In addition to any other rights granted by law or by this Lease, the Port reserves the following specific rights with respect to the Common Areas: to adjust the boundaries of, expand or delete Common Areas; to change Port Rules for the use of the Common Areas; to permit the use of the Common Areas by others in such manner as the Port may from time to time determine; to close all or any portion of the Common Areas (so long as Lessee still has ingress and egress to and from the Premises); to construct additional buildings or other Improvements in the Common Areas; and to evict anyone from the Common Areas who fails to comply with any applicable laws, including applicable Port Ordinances and/or Port Rules.

### **11.1 Recovery of Damages**

All references to "Operating Charge" in the Lease are hereby deleted.

## **12. DEFINED TERMS**

Capitalized terms shall have the meanings given to them in the Lease unless otherwise indicated in this First Amendment.



**13. SAVINGS CLAUSE**

Except as expressly modified by this First Amendment, the Lease shall remain in full force and effect according to its terms.

**14. WARRANTY OF AUTHORITY**

The individuals executing this First Amendment warrant that they have full authority to execute this First Amendment on behalf of the entity for whom they are acting herein.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date set forth above.

LESSEE

LESSOR

ALEXANDER GOW, INC.

THE PORT OF PORTLAND

By: \_\_\_\_\_

*Peter Singh*

By: \_\_\_\_\_

*Bill Wyatt*  
Bill Wyatt, Executive Director

Name: \_\_\_\_\_

*Peter Singh*

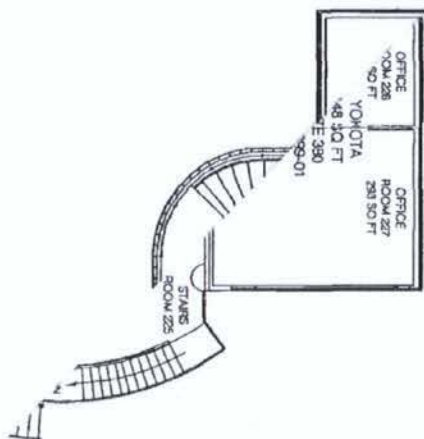
APPROVED AS TO LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND

Title: \_\_\_\_\_

*Vice-President*

By: \_\_\_\_\_

*Julie Killeen*  
Counsel for Port of Portland





**EXHIBIT B**

**NOTICE TO TENANTS**

Dear Tenant:

As you are aware, your agreement with the Port of Portland requires you to pay all property taxes assessed against the property you occupy. The Port of Portland and Multnomah County take this obligation seriously and will strictly enforce it. If taxes are not paid promptly when due, the Port may pursue remedies for default, including termination of your agreement. Multnomah County may also pursue a collection action for unpaid taxes.

Property tax statements are sent by Multnomah County each November. If you wish to have your property tax statements sent to a different address, please contact the Multnomah County Division of Assessment and Taxation at:

Multnomah County Assessment & Taxation  
P.O. Box 2716  
Portland, OR 97208

## AMENDMENT NO. 2 TO OFFICE LEASE

THIS AMENDMENT NO. 2 TO OFFICE LEASE (this "Second Amendment") is made and entered into effective as of May 25, 2006 ("Effective Date") by and between the PORT OF PORTLAND (the "Port"), a port district of the state of Oregon, and ALEXANDER GOW, INC., a corporation duly organized under the laws of the State of Washington ("Lessee").

### RECITALS

A. The Port is the lessor and Lessee is the lessee under that certain Office Lease dated December 1, 1999 as amended by Amendment No. 1 dated July 1, 2004, for certain real property and improvements located at 3556 NW Front Avenue, in the Port's Terminal 2 Administration Building (Port Agreement No. 1999-257) (as amended, the "Lease").

B. Prior to Amendment No. 1, adjustments to Basic Rent were made on the first day of any Extension Term (December 1) and adjustments to the Operating Charge were made annually on July 1. Amendment No. 1 eliminated the Operating Charge. Pursuant to Section 3.2 of Amendment No. 1, adjustments to Rent were to be made annually on the Commencement Date (December 1), but the annual adjustments have continued to be made annually on July 1.

C. The Port and Lessee desire to amend the Lease to change the Adjustment Date to July 1 and to agree that no modifications shall be made to any prior Rent adjustments.

NOW THEREFORE the parties, in consideration of the foregoing Recitals and the mutual covenants and conditions set forth below, agree as follows:

### 1. ADJUSTMENTS TO RENT

The first sentence of Section 3.2 (Adjustments to Rent) of the Lease shall be deleted in its entirety and replaced with the following new first sentence:

Beginning on July 1, 2004, Rent shall be adjusted annually on July 1 during the Lease Term and any Extension Term on July 1 (the "Adjustment Date") by the Port's calculation of the percentage change in the "Consumer Price Index - U.S. City Average for all Items for All Urban Consumers (1982-84=100)" published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI-U") two months prior to the Adjustment Date.

### 2. DEFINED TERMS

Capitalized terms shall have the meanings given to them in the Lease unless otherwise indicated in this Second Amendment.

### 3. SAVINGS CLAUSE

Except as expressly modified by this Second Amendment, the Lease shall remain in full force and effect according to its terms.



4. **WARRANTY OF AUTHORITY**

The individuals executing this Second Amendment warrant that they have full authority to execute this Second Amendment on behalf of the entity for whom they are acting herein.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date set forth above.

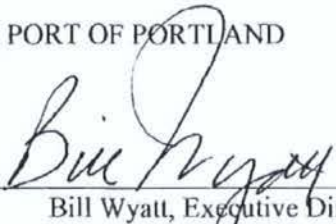
LESSEE

LESSOR

ALEXANDER GOW, INC.

THE PORT OF PORTLAND

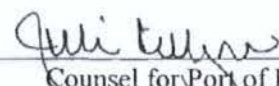
By: 

By:   
Bill Wyatt, Executive Director

Name: P. Singh

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